UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization.

UAW'S REQUEST FOR SPECIAL PERMISSION TO APPEAL ORDER GRANTING INTERVENORS' MOTIONS TO INTERVENE

Pursuant to § 102.26 of the NLRB Rules and Regulations, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (the "UAW") requests special permission of the Board to appeal the Acting Regional Director's ("ARD") Order granting the Motions to Intervene of Michael Burton, et al. (the "Burton Motion") and Southern Momentum, Inc. et al. (the "SMI Motion"). What follows are the reasons special permission should be granted, and the grounds relied on for the appeal, in addition to those stated in our attached Opposition to the motions to intervene, which we incorporate herein by this reference:

I. Statement of the case

Volkswagen Group of America, Inc. ("VWGOA") filed an RM Petition on February 3, 2014, seeking an election in a unit of VWGOA's production and maintenance employees (the "Unit") at its facility in Chattanooga, Tennessee. A

Stipulated Election Agreement (the "SAE") was approved on that date by NLRB Region 10. Pursuant to the SAE, Region 10 conducted an election on February 12, 13 and 14, 2014. The vote as tallied was 712-626 against representation by the UAW. On February 21, 2014, the UAW timely filed objections to conduct affecting the election (the "Objections", attached as Exhibit A hereto) and asked the Board to set aside the election and order that a new election be held. On February 24, 2014, Michael Burton, et al. filed the Burton Motion (attached as Exhibit B hereto). On February 28, 2014, Southern Momentum, Inc., a newly formed Tennessee corporation, and two employees filed the SMI Motion (attached as Exhibit C hereto). On March 6, 2014, UAW filed its Opposition (attached as Exhibit D hereto) to the Burton Motion and the SMI Motion (together, the "Motions") submitting that the requests for intervention by the movants (together the "Movants") should be denied. On March 7, 2014, the Movants each filed a Reply in Support of Motion to Intervene (attached as Exhibits E and F hereto). On March 10, 2014, the ARD for Region 10 issued an Order Granting Southern Momentum's and Michael Burton's Motions to Intervene in the Objections Hearing (Exhibit G hereto). UAW files this Request for Special Permission of the Board to Appeal the Order Granting the Movants' Motions to Intervene, and submits that this Special Appeal should be granted by the Board because the ARD's Order is contrary to the facts and the law, and the Order should be reversed and the Movants' Motions to Intervene dismissed because Movants lack standing to intervene, Movants' claims are not

appropriate for election objection proceedings, and because Board and Federal Circuit Court decisions do not support intervention in this case.[1]

II. Reasons for granting the appeal of the ARD's Order

A. Admittedly departing from the Board's normal practice,[2] the ARD granted the Motions to Intervene, based on this reasoning:

> This is a non-precedential exceptional circumstance where consideration for deviating from our normal practice is warranted. I recognize that there have been few instances in which employees not a party to the election have been granted intervenor status at the post-election proceedings. However, in this unique case involving third party misconduct, ***some of the alleged objectionable conduct involves statements made by employees*** who oppose representation by the Union and the extent to which those statements could cause the election to be set aside. Thus, in situations such as this, where the rights of certain employees were implicated, the Board has permitted those employees the right to participate in the hearing.[2]
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> [2] *Shoreline Enterprises of America,* 114 NLRB 716 (1955).

(ARD Order, p. 2, emphasis supplied.) Based solely on this reasoning, the ARD granted motions of several employees and a Tennessee corporation named Southern Momentum, Inc. to intervene "for the purpose of participation at a hearing on the

[1] The Movants sought, in the alternative, leave to file an amicus brief in this proceeding. Neither the UAW nor VWGOA opposed that request. However, as developed herein, the ARD's Order goes well beyond granting permission to file an amicus brief.

[2] See § 11194.4 of the NLRB Representation Casehandling Manual, Part Two, which sets forth the standards for motions to intervene: "11194.4 Tests for Granting or Denying Intervention. Should the union seeking intervention meet any of the tests described in Secs. 11022, et seq., the motion for intervention should be granted. *Motions to intervene made by employees or employee committees not purporting to be labor organizations should be denied.* Motions to intervene made on the basis of interest in the unit by labor organizations representing employees in other parts of the plant, for example, or other plants of the employer, should be granted." See also *Ashley v. NLRB*, 255 Fed. Appx. 707, 709 (4th Cir. 2007) and other cases cited in UAW's Opposition to Motions to Intervene.

Union's objections by: (1) offering evidence in rebuttal to the Union's objections, (2) cross-examining witnesses, and (3) filing briefs with the Board." (ARD Order, p. 3)

B. The ARD's reasoning turns solely upon her non-specific reference to the UAW's Objections having relied upon "statements made by employees who oppose representation by the Union." The Board should thus first examine precisely what are the "statements made by employees" to which the Objections refer.

The answer is straightforward: the UAW's Objections refer to *only one statement made by a bargaining unit employee.* And the Objections rely on that statement – made in a written press release – *solely as evidence of the dissemination of threats made by State of Tennessee officials* – the threats that form the centerpiece of UAW's objections (along with the later threats of U.S. Senator Corker). Specifically, at pages 4-5, the Objections state:

> These and similar threats by State officials were widely disseminated in broadcast, print and social media, including on various campaign websites managed and paid for by business-supported and other groups such as "Southern Momentum," "workerfreedom.org," and "Americans for Tax Reform" and directed at VWGOA voters. For example, Mike Burton, a sponsor of the "No2UAW" website, speaking to his fellow VWGOA workers, promptly and publicly republished the State Officials' threats and truthfully described them for what they were: shortly after these threats were made, Burton quickly issued a press release stating: "This confirms exactly what we have been telling people … A vote for the UAW is a vote against expansion of the plant, plain and simple." (Burton quote appears in UX1 (attached hereto).)

None of the other putative employee intervenors are even mentioned in the UAW's Objections.

Nor is there any factual dispute that the press release quoting Mr. Burton was actually issued on February 10, following the press conference held by the Tennessee

state officials at which they made their threats.[3] Because of this, it is impossible to discern any need for putative intervenor Burton to appear at a hearing on objections, to cross-examine witness and to offer rebuttal evidence to defend his statement, all as allowed by the ARD Order. Mr. Burton does not deny that the press release quoting him was issued and disseminated to the press on February 10. There are therefore no facts in dispute raised by UAW's citation of the Burton statement as evidence of dissemination of the Tennessee state officials' threats of loss of financial incentives. Burton's undisputed republication of these threats does not, in fact, even give rise to an issue warranting a hearing. For this reason alone, the Board should reverse the ARD Order.

C. The ARD Order also grants intervenor status to a Tennessee corporation named Southern Momentum, Inc., which was incorporated on January 31, 2014, and whose registered agent is the Chattanooga management law firm Evans Harrison Hackett PLLC. See Objections, UX5. This part of the ARD Order is wholly unprecedented, without legal basis, and inconsistent with the purposes of the Act.

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[3] The Burton press release is quoted in Exhibit UX1 to UAW's Objections, a February 10, 2014 article in Automotive News, the lead auto industry online and print publication. The article is entitled "*Tenn. politicians threaten to kill VW incentives if UAW wins elections.*" After describing the Tennessee lawmakers threats, the article states this with respect to Mr. Burton:

> UAW critics jumped on the lawmakers' claim to persuade workers to vote against union representation. A group called Southern Momentum quickly put out a statement that quoted Mike Burton, a paint-shop employee who leads a coalition of workers opposed to the union. "This confirms exactly what we have been telling people," he was quoted as saying. "A vote for the UAW is a vote against the expansion of the plant, plain and simple."

Southern Momentum has not sought to intervene as a labor organization or a statutory employee, since it is neither. Moreover, because Southern Momentum has admitted since the election that it has received substantial contributions from employers to support its activities in the February VWGOA election campaign[4], its status is inconsistent with that of a labor organization within the meaning of Section 2(5) of the NLRA.

It is unprecedented to grant intervenor status to a corporate entity that is not an employer, an employee or a labor organization under the Act. Section 7 rights run to employees, not to employer-funded corporations. Nor has either the ARD or Southern Momentum pointed to anything in the Act, or in the Board's rules and regulations or casehandling manual, supporting R case intervenor status for a privately-owned corporation that is not the employer of bargaining unit employees. The ARD's Order granting intervenor status to Southern Momentum should accordingly be denied.

Moreover, even if it were somehow proper to grant intervenor status to a private corporation such as Southern Momentum, Inc., there is no basis to grant such intervention here, for the same reason that there is no basis to grant intervenor status to Mr. Burton or any of the other putative employee intervenors. As with Mr. Burton, all

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[4] See Exhibit H hereto, a February 28, 2014 Reuters article, stating that Southern Momentum attorney Maurice Nicely told Reuters in an interview that "he led fundraising for Southern Momentum, which in late January and early February raised money 'in the low six figures' from Chattanooga area businesses and individuals. Nicely said the money was not raised by anti-UAW workers at the plant." Southern Momentum used these funds, in part, to hire Projections, Inc./UnionProof.com, a leading consulting firm used by employers to oppose unionization campaigns. See Ex. I hereto, a post-election solicitation by this firm claiming to have been hired by Southern Momentum.

that the UAW's Objections allege as to Southern Momentum is that it disseminated and republished – *in undisputed written public statements* – the threats by third-party politicians that are the focus of the UAW's Objections.

Specifically, the Objections state as follows with respect to Southern Momentum:

- "'Southern Momentum,' represented by Chattanooga management attorney Maurice Nicely[5] and purporting to be an organization representing VWGOA workers, publicly repeated [Tennessee Senate Speaker Bo] Watson's threat by stating in the press, through Nicely, that '[f]urther financial incentives — which are absolutely necessary for the expansion of the VW facility here in Chattanooga — *simply will not exist if the UAW wins this election*.' See [Objections Ex.] UX6, a February 10, 2014 nationally syndicated article quoting Nicely and referring to the remarks of the State Officials that Nicely echoed as a "threat.""(Objections, p. 6, footnote omitted, citing to reports of a *written press statement* by Mr. Nicely repeated in Objections Ex. UX6);
- "[O]n February 10, 2014, the 'Southern Momentum' No2UAW *website published the State Officials' threats* of loss of State financial incentives for VWGOA *under the then-banner headline* 'VW May Lose State Help if the UAW is Voted in at the Chattanooga Plant.' See archive in [Objections] Exhibit UX7 … Other anti-UAW campaign websites also published these State Officials' threats, which were well known among the VWGOA worker electorate." (Objections, p. 6, emphasis supplied.)
- Senator Corker's February 12 *threat "promptly appeared on the No2UAW website, the Southern Momentum Facebook page*, and on the Grover Norquist "Worker Freedom" campaign website. In fact, the Reuters article reporting Senator Corker's statement, entitled "Senator drops bombshell during VW plant union vote," was almost immediately linked with a "Bombshell" *banner headline on the No2UAW* and "Worker Freedom" Norquist *website*s and widely distributed as a handbill in the VWGOA plant during the Election." (Objections, p. 8, footnote omitted, emphasis supplied, citing to Reuters article reproduced as Objections Ex. UX9.)
- The Southern Momentum No2UAW "Facebook page, a center of debate on the campaign, placed beyond doubt how the Corker

[5] Southern Momentum, Inc. was incorporated on January 31, 2014. Its office address and its registered agent are Mr. Nicely's management-side law firm, Evans Harrison Hackett PLLC, in Chattanooga. See UX5 (attached hereto).

> threats were to be read by the VWGOA workforce: The website's hosts linked to media reports of Corker's statements in "*The Chattanoogan"* with this host comment: "***Our choices just became clearer ... UAW <u>or</u> B-SUV…* Chattanooga Will Get New Line of SUVs if UAW Is Not Approved."** (Objections, p. 12, quoting UX13, emphasis appears in Objections text, not in UX13)."

In other words, since the Objections' allegations with respect to Southern Momentum, Inc. are directed solely to that corporation's undisputed written statements republishing the third-party politician threats that are the focus of UAW's post-election claim here, there is no evidentiary or other interest for Southern Momentum to protect. It should be denied intervenor status.[6]

D. The ARD's Order is ill conceived and raises fundamental issues that the Board must address, despite the ARD's suggestion that her Order is "non-precedential." For example, will the "intervenors" be able to block any agreement by the employer and the UAW that the election was tainted by the third-party threats of state and federal politicians, and be able to block an election set-aside and rerun? If a rerun election is ordered, what will be the "intervenors'" role with respect to the setting of a rerun election? Will the ARD's Order distort what should otherwise be a straightforward hearing into its opposite? (At bottom UAW's Objections concern undisputed statements by third-party politicians and the undisputed and extremely broad

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[6] Southern Momentum, Inc. claims to represent approximately 600 VWGOA employees, based on undisclosed signatures on anti-UAW petitions signed well before Southern Momentum, Inc. was incorporated on January 31, 2014. (See Motion to Intervene, p. 2; compare incorporation records at Objections, Ex. UX5) But even if those petitions exist and even if they were signed exclusively by bargaining unit employees (and not also by non-unit employees and/or non-statutory employees), such petitions were signed in Fall 2013, and thus could not have authorized that Southern Momentum "represent" the signatories, since Southern Momentum did not exist until January 31, 2014, when it was incorporated.

dissemination of those third-party threats in all forms of media and throughout the VWGOA workforce. But as apparent from their Motions to Intervene, the putative intervenors seek to focus on everything but those third-part politician threats.)

These are important questions that the Order in its oversimplification and absence of legal reasoning fails to address and which will inevitably have implications beyond this case.

CONCLUSION

The Board should grant the UAW's request for special permission to appeal, reverse the ARD's Order and deny the Motions to Intervene.[7] We also suggest that the Board stay any hearing that may be required in this matter until the questions presented by this request for special permission to appeal are decided.

Respectfully submitted,

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[7] The UAW also relies here upon the arguments made in its original Opposition to the Motions to Intervene, attached hereto, and incorporates those arguments by this reference. We also continue our non-opposition to the filing of amicus briefs in this matter. Further, we suggest to the Board that this case may be an appropriate one for transfer to the Board under Section 102.67(h), whether or not an evidentiary hearing is deemed necessary herein.

Attorneys for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW

Dated: March 12, 2014

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization.

OBJECTIONS TO CONDUCT AFFECTING ELECTION

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (the "UAW") objects to conduct affecting the election held in this matter on February 12, 13 and 14, 2014 among the production and maintenance employees of Volkswagen Group of America, Inc. ("VWGOA") at its facility in Chattanooga, Tennessee ("the Election"). In support, the UAW states as follows, reserving its right to fully document the basis for its Objections through such investigations and evidentiary hearings as the Board determines to conduct.

1.

In the days between the filing of the Petition in this matter (hereafter "the Petition") and the conclusion of the Election, and at other times, senior officials of the State of Tennessee (the "State"), including Governor William Haslam, State House

Speaker Beth Harwell, State House Majority Leader Gerald McCormick, Senate Speaker Pro Tem Bo Watson, Chairman of the State Senate Commerce and Labor Committee Jack Johnson, and Vice-Chairman of the State Senate Commerce and Labor Committee Mark Green (collectively, the "State Officials"), conducted what appears to have been a coordinated and widely-publicized coercive campaign, in concert with their staffs and others, to deprive VWGOA workers of their federally-protected right, through the Election, to support and select the UAW as their exclusive representative under Section 9(a) of the National Labor Relations Act (the "Act"), free of coercion, intimidation, threats and interference. The State Officials' campaign included, without limitation, publicly-announced and widely disseminated threats by the State Officials that State-financed tax and other incentives and financial benefits would be withheld from VWGOA, to the detriment of VWGOA and VWGOA workers, and that other harm would come to such workers and their employer if the VWGOA workers exercised their protected right to select the UAW as their representative pursuant to Section 9(a) of the Act. Most of the statements made by the State Officials as part of this campaign centered on a threatened loss of State financial incentives for VWGOA expansion in Chattanooga if the UAW was elected. And these threats were clearly designed to influence the votes of VWGOA workers in the Election and to deprive them of their Section 7 right to vote in an atmosphere free of coercion, intimidation and interference. Thus, campaign leader State Senate Speaker Pro Tem Bo Watson explained his threats on the eve of the Election by stating that "[t]he workers that will be voting, need to know all of the potential consequences, intended and unintended, should they choose

to be represented by the United Auto Workers." Those "consequences" of UAW representation, as Watson made clear, included their employer's loss of State financial support seen by all as critical to make the Chattanooga plant viable through the introduction of a second product line (the B-SUV) in order to bring the plant to full, secure and profitable capacity utilization.

Summarizing the State Officials' threats, State Senate Speaker Pro Tem Watson sent this message to VWGOA workers: "I believe the members of the Tennessee Senate will not view unionization as in the best interest of Tennessee. The Governor, the Department of Economic and Community Development, as well as the members of this delegation, will have a difficult time convincing our colleagues to support any Volkswagen incentive package." These threats are very significant, for State financial incentives were a key component in VWGOA's decision to locate in the State and are necessarily a key component to any future VWGOA decisions regarding future expansion and full capacity utilization in Chattanooga, and to the heightened job security that would accompany such an expansion. In the Board investigation that will follow the filing of these Objections, the UAW will present the Board with a full collection of the threats against VWGOA and its workers made by the State Officials, as well as the dissemination of these threats both in the public media and directly to the VWGOA workforce. The State Officials' threats include, but are not limited to, those described in the following, selected from scores of local and national media reports in the days before and during the Election:

- "Tenn. Politicians threaten to kill VW incentives if UAW wins

election" Reported at: http://www.autonews.com/article/20140210/OEM01/140219986/tenn-politicians-threaten-to-kill-vw-incentives-if-uaw-wins-election# (Statements of Governor Haslam and House Majority Leaders Gerald McCormick re loss of VW incentives if VWGOA workers elect UAW) (See Exhibit UX1 attached hereto);

- "Tenn. Lawmakers: VW incentives threatened by UAW" Reported at http://www.businessweek.com/ap/2014-02-10/tenn-dot-lawmakers-vw-incentives-threatened-by-uaw (repeating Watson threat and quoting House Speaker Harwell regarding the effect of UAW being elected on State incentives: "It would definitely put those [incentives] in jeopardy … That would jeopardize a very good arrangement for Volkswagen to locate here." (See Exhibit UX2 attached hereto);
- "Union Drive Doesn't Bother Management, but GOP Fumes" reported at http://www.nytimes.com/2014/02/12/business/automaker-gives-its-blessings-and-gop-its-warnings.html?_r=0 (containing more threats including Bo Watson's statement that "The members of the Tennessee Senate will not view unionization as in the best interest of Tennessee") (Exhibit UX3 attached hereto);
- "Bo Watson Says VW May Lose State Help If The UAW Is Voted In At Chattanooga Plant; McCormick Urges Workers To Reject Union" reported at http://www.chattanoogan.com/2014/2/10/269310/Bo-Watson-Says-VW-May-Lose-State-Help.aspx ; (containing more threats, including Bo Watson's statement that "[t]he workers that will be voting need to know all the potential consequences, intended and unintended, should they choose to be represented by the UAW") (Exhibit UX4 attached hereto).[1]

These and similar threats by State officials were widely disseminated in broadcast, print and social media, including on various campaign websites managed and paid for by business-supported and other groups such as "Southern Momentum," "workerfreedom.org," and "Americans for Tax Reform" and directed at VWGOA

[1] These threats by State Officials were published in scores of broadcast, print and social media outlets, including virtually all Chattanooga-area media. The UAW will provide the details of this republication to the Board during the investigation of these objections.

voters. For example, Mike Burton, a sponsor of the "No2UAW" website, speaking to his fellow VWGOA workers, promptly and publicly republished the State Officials' threats and truthfully described them for what they were: shortly after these threats were made, Burton quickly issued a press release stating: "This confirms exactly what we have been telling people … A vote for the UAW is a vote against expansion of the plant, plain and simple." (Burton quote appears in UX1 (attached hereto).) Moreover, Burton and his supporters broadly distributed the *Chattanoogan* article entitled "Bo Watson Says VW May Lose State Help If the UAW Is Voted In At Chattanooga Plant" (Exhibit UX4) as a leaflet in the VWGOA facility immediately after its February 10 publication, two days before the Election.

The State Officials' threats were a constant presence in the minds of VWGOA voters in the period immediately before and during the Election, and were a blatant attempt to create an atmosphere of fear of harm to VWGOA employees, their jobs and the viability of their employer, all in order to influence the outcome of the election and cause VWGOA employees to vote against UAW representation out of fear. As described by a dissenting State official, the threats were "an outrageous and unprecedented effort by state officials to violate the rights of employers and workers [by] basically threatening to kill jobs if workers exercise their federally protected rights to organize." http://www.nytimes.com/2014/02/12/business/automaker-gives-its-blessings-and-gop-its-warnings.html?_r=0 (See UX3 (attached hereto).)

2.

Within hours of the February 10, 2014 press conference at which State Official

Bo Watson delivered his particular threats referenced above, and in apparent coordination with those threats, a newly-registered Tennessee corporation known as "Southern Momentum," represented by Chattanooga management attorney Maurice Nicely[2] and purporting to be an organization representing VWGOA workers, publicly repeated Watson's threat by stating in the press, through Nicely, that "[f]urther financial incentives — which are absolutely necessary for the expansion of the VW facility here in Chattanooga — *simply will not exist if the UAW wins this election*." See UX6, a February 10, 2014 nationally syndicated article quoting Nicely and referring to the remarks of the State Officials that Nicely echoed as a "threat." The view that the State Officials' statements were a "threat" was echoed by Nashville management partner Zan Blue of Costangy, Brooks and Smith, who saw the statements in just that way. See February 12, 2014 9:09 a.m. audio interview at beginning at 7 minute 14 second mark at http://wutc.org/post/reality-check-uaw-ate-detroit-and-chattanooga-s-menu ("UAW Ate Detroit and Chattannoga's on the Menu?") ("They do sound like threats and threats are never useful").

3.

Also on February 10, 2014, the "Southern Momentum" No2UAW website published the State Officials' threats of loss of State financial incentives for VWGOA under the then-banner headline "VW May Lose State Help if the UAW is Voted in at the Chattanooga Plant." See archive in Exhibit UX7 (attached hereto). Other anti-UAW

[2] Southern Momentum, Inc. was incorporated on January 31, 2014. Its office address and its registered agent are Mr. Nicely's management-side law firm, Evans Harrison Hackett PLLC, in Chattanooga. See UX5 (attached hereto).

campaign websites also published these State Officials' threats, which were well known among the VWGOA worker electorate.

4.

On February 12, 2014, during the first day of the Election, United States Senator Bob Corker escalated the campaign threats made by the State Officials, stating that he had been "assured" by VWGOA that if the VWGOA workers voted against the UAW, they would be rewarded with a new product line at Chattanooga. Corker issued his dual threat and promise of benefit in the middle of the Election itself to coerce the VWGOA workforce into voting against UAW representation. Senator Corker's threat was made using United States Government resources, and was published and republished on the Senator's official Senate website, as well as very broadly disseminated in all media. Moreover, we believe that Senator Corker used government travel funds specifically to fly to Chattanooga to make his threat in the most open and notorious manner. During the press conference convened by Senator Corker to threaten VWGOA workers, he stated "I've had conversations today and based on those am ***assured*** that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga." (Emphasis supplied – of course, the only entity that can ***assure*** where a product is manufactured is Volkswagen itself.) See, e.g., http://www.corker.senate.gov/public/index.cfm/2014/2/corker-conversations-today-indicate-a-vote-against-uaw-is-a-vote-for-suv-production (see also Exhibit UX8 with multiple pages from Senator Corker's official United States Senate website). Senator

Corker's statement and his press conference were widely reported and well-known to VWGOA workers. Moreover, we submit that Senator Corker's statement appears by its timing, if nothing else, to have been part of a coordinated effort along with the above-referenced State officials and anti-union groups to coerce a no vote. It was widely published under banner headlines in the media and played repeatedly on broadcast media in Chattanooga. It promptly appeared on the No2UAW website, the Southern Momentum Facebook page, and on the Grover Norquist "Worker Freedom" campaign website. In fact, the Reuters article reporting Senator Corker's statement, entitled "Senator drops bombshell during VW plant union vote,"[3] was almost immediately linked with a "Bombshell" banner headline on the No2UAW and "Worker Freedom" Norquist websites and widely distributed as a handbill in the VWGOA plant during the Election. Moreover, when VWGOA official Frank Fischer denied a link between a vote against UAW and the placement of the new SUV in Chattanooga, Senator Corker repeated and in fact amplified his threat, saying: "Believe me, the decisions regarding the Volkswagen expansion are not being made by anyone in management at the Chattanooga plant and we are also very aware Frank Fischer is having to use old talking points when he responds to press inquiries."[4] In a widely-disseminated statement to the Associated Press, Corker also said "There is no way I'd put out a statement like I put out unless I was 1,000 percent **["1,000 percent" in original]** that it

[3] UX9 (attached hereto): http://www.reuters.com/article/2014/02/13/us-volkswagen-corker-idUSBREA1C04H20140213 .
[4] UX10 (attached hereto: http://www.corker.senate.gov/public/index.cfm/2014/2/corker-statement-on-expansion-conversations .

was accurate in every way."[5] Senator Corker, who was the mayor of Chattanooga at the time that VWGOA decided to locate its facility there, has repeatedly and publicly emphasized his close connection to company officials. He told Nooga.com, in an article posted on February 13, that much of the negotiation that led to Volkswagen choosing Chattanooga occurred around the dining room table of Corker's Chattanooga home.[6] In yet another local newspaper article published during the Election, Senator Corker claimed that "[t]here's not a week that goes by when we don't talk to someone at VW USA or VW in Germany." See http://www.timesfreepress.com/news/2014/feb/14/for-sen-corker-the-uaw-vote-is-personal-passions . All these statements were clearly intended to convey as fact that Senator Corker knew the company's plans and that his repeated threat and promise of benefit was the truth.[7] Senator Corker's conduct was clearly timed and intended to coerce employees to vote against UAW by causing them to fear loss of new work for the Chattanooga plant, and thus a diminishment of job security, if they exercised their

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[5] UX11 (attached hereto) http://www.washingtonpost.com/business/corker-stands-by-claim-vw-will-expand-if-uaw-loses/2014/02/13/931cd628-94ff-11e3-9e13-770265cf4962_story.html .

[6] UX12 (attached hereto) http://www.chattanoogan.com/2014/2/13/269538/VW-Chattanooga-President-Disputes.aspx .

[7] Senator Corker repeatedly told the media, for public consumption, that he was the ultimate insider when it came to VWGOA's plans, including his statement during the Election that he knew more about the Company's plans than its CEO in America. Media reports concerning Senator Corker's involvement with the VWGOA facility and its leadership going back to 2008 can be found at the Volkswagen Group of America website at http://199.5.47.214/newsroom/news_2008.htm, and at related web archives on the VWGOA "Newsroom" site. Senator Corker 's point in asserting a direct link between VWGOA's assignment of the B-SUV line to Chattanooga to a vote by VWGOA workers against the UAW was that he was the most credible and reliable source of information on this issue.

federally protected right to organize. Senator Corker's conduct was shameful and undertaken with utter disregard for the rights of the citizens of Tennessee and surrounding states that work at VWGOA Chattanooga. Standing alone, it is a more than adequate basis for sustaining these Objections.

5.

The cumulative effect[8] of conduct such as that summarized above created a situation strikingly similar "to that existing when third parties conduct massive campaigns to convey the message that choosing the union would cause the employer to move or shut down and thereby deprive employees of job opportunities," *Frates, Inc.*, 230 NLRB 952 (1977). It is well-established that such campaigns, even when they are "spontaneous, motivated solely by self-interest and what it deemed best for" the community, may nonetheless destroy the possibility of a fair election. *Lake Catherine Footwear, Inc*. 133 NLRB 443, 449-450 (1961). The clear message of the campaign was that voting for the union would result in stagnation for the Chattanooga plant, with no new product, no job security, and withholding of State support for its expansion. State Senate Speaker Pro Tem Watson threatened that harm to VWGOA and its workers would come from the denial of tax and other state incentives if UAW was elected; while U.S. Senator Corker announced that he *knew from the employer* that a vote to reject the UAW would mean a vitally important new product line would be awarded to Chattanooga, and that the opposite would result if the VWGOA workers dared to

[8] See *Picoma Industries, Inc.,* 296 NLRB 498, 499 (1989) (cumulative effect of individual incidents of third-party misconduct must be considered in evaluating fairness of election).

exercise their right to vote for the UAW. Each part of this heavy-handed campaign magnified the other. *See Picoma Industries, supra,* and *Universal Mfg. Corp.*, 156 NLRB 1459 (1966). Whether spontaneous or coordinated, whether motivated by genuine concern for the community or paid from the war-chests of outside employers—the *effect* of this campaign is clear. No VWGOA employee could cast a vote without a well-founded fear that the exercise of the franchise could mean both that their job security at VWGOA and the financial health of their plant were in serious jeopardy. Such an environment, foisted on VWGOA workers by politicians who have no regard for the workers' rights under federal law, is completely contrary to the environment that the National Labor Relations Act demands for union certification elections.

CONCLUSION

The Board will set aside an election based on third-party misconduct when the misconduct created "a general atmosphere of fear or reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). The five factors the Board considers in making this determination all favor setting this Election aside. The nature of the threat — the diminishment of job security if the workers vote for the union—is, like the threat of a plant closing, among the most serious that can occur. The threat was directed at the entire bargaining unit and was known to every potential voter in this extremely high visibility campaign. Moreover, the threat to eliminate state incentives was made by powerful political leaders who, in fact and in the reasonable perception of the employees, were quite capable of putting their threat into effect. Even worse, the "fist" of the State Officials' threats about tax incentives for a new product

line was in fact amplified by the "velvet glove"[9] of a United States Senator who claimed to have "***assurance***" from the Company that the new product line would be a reward for a "No" vote. In these circumstances, employees undoubtedly treated this information with utmost seriousness and accepted it as true. In fact, the "No2UAW" Facebook page, a center of debate on the campaign, placed beyond doubt how the Corker threats were to be read by the VWGOA workforce: The website's hosts linked to media reports of Corker's statements in "*The Chattanoogan*" with this host comment: "***Our choices just became clearer ... UAW or B-SUV…*** **Chattanooga Will Get New Line of SUVs if UAW Is Not Approved."** (UX13 – attached hereto, emphasis supplied). This resonates as a classic "fist inside the velvet glove" threat: if you vote against the Union, you will be rewarded, but if you go the other way you will be punished. Senator Corker knew exactly what he was doing: he was purporting to deliver from the Employer, in the midst of the Election, a promise of benefit if workers voted against the UAW, and a threat to withhold that benefit if VWGOA workers exercised their protected right to vote for the Union. Such shameful conduct, by itself, and especially when considered together with the related conduct of the State Officials, amply supports the Board granting these Objections to prevent VWGOA workers from being deprived of a free and uncoerced choice.

Because of these and other related pre-Election events, acts and conduct, the Board should set aside the Election and order that a new election be held.

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[9] *See NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964).

Respectfully submitted,

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Dated: February 21, 2014

UNION EXHIBIT:

UX 1

Automotive News

Tenn. politicians threaten to kill VW incentives if UAW wins election

Gabe Nelson
Automotive News | February 10, 2014 - 4:23 pm EST
-- **UPDATED: 2/10/14 7:21 pm ET - adds new Corker-UAW dispute**

WASHINGTON -- Volkswagen AG has been soliciting subsidies from Tennessee and Mexico, hoping to pick a production site this year for a mid-sized SUV due to go on sale in 2016.

And it seems that this week's UAW election at the VW assembly plant in Chattanooga could tilt the competition in Mexico's favor.

The reason? Republican lawmakers in Tennessee might no longer want to double down on the $580 million in state and local incentives that they offered VW in 2008.

If the workers opt for UAW representation, VW would have a "very tough time" securing more incentives from the state legislature, Bo Watson, a state senator from suburban Chattanooga, said during a press conference this morning. He was flanked by House Majority Leader Gerald McCormick, a powerful figure in Tennessee politics, who said the "heavy hand" of the UAW is unwelcome in the state.

"The taxpayers of Tennessee reached out to Volkswagen and welcomed them to our state and our community," McCormick, a Republican from Chattanooga, said in an e-mail to Automotive News. "We are glad they are here. But that is not a green light to help force a union into the workplace. That was not part of the deal."

A spokesman for Tennessee Gov. Bill Haslam said in an e-mail to *Automotive News* that state lawmakers would play a big role in approving incentives for the VW plant because the project would be too large to approve with existing funding for the state's "FastTrack" incentive program.

"The governor has been clear about the impact of the UAW on the state's ability to recruit other companies to Tennessee," the Haslam spokesman said. "Any discussions of incentives are part of additional and continued talks with VW, which we look forward to."

Last-minute lobbying

UAW critics jumped on the lawmakers' claim to persuade workers to vote against union representation. A group called Southern Momentum quickly put out a statement that quoted Mike Burton, a paint-shop employee who leads a coalition of workers opposed to the union.

"This confirms exactly what we have been telling people," he was quoted as saying. "A vote for the UAW is a vote against the expansion of the plant, plain and simple."

Watson and McCormick were not just critical of the UAW. They were also critical of VW, saying that the company has given union supporters an unfair advantage by allowing them to enter the plant and speak with workers.

Volkswagen denies that charge. In a statement this weekend, the company said both UAW supporters and opponents are free to hand out leaflets and speak with their fellow employees about the union drive.

The statement also said VW could have recognized the UAW with a "card check," in which signed cards of support take the place of a secret-ballot election. The company insisted on an election, said Sebastian Patta, vice president of human resources, to reflect its belief that "democracy is an American ideal."

Patta added: "Outside political groups won't divert us from the work at hand: innovating, creating jobs, growing, and producing great automobiles."

Site decision coming soon

About 1,500 workers are eligible to vote in the UAW election, which will take place Wednesday to Friday under the supervision of the National Labor Relations Board.

It is unclear whether Tennessee politicians' subsidy threat would last beyond the election or whether the promise of a plant expansion, with the thousands of jobs it would bring, would outweigh their dislike of the UAW.

Volkswagen CEO Martin Winterkorn announced last month that VW will launch a mid-sized SUV in 2016, modeled after the CrossBlue concept that was unveiled at the Detroit auto show in 2012.

Michael Macht, the board member for production at VW, told *Automotive News* at the time that a decision on a production site would follow within six months. He said VW was still asking about incentives.

Corker vs. UAW

Some top lawmakers in Tennessee have refrained from commenting ahead of the UAW election, including Republican U.S. Sen. Bob Corker, who said last year that inviting the union into its plant would make VW the "laughingstock" of the industry.

Corker has often drawn the UAW's ire for his criticism of the union, particularly during the government bailout discussions for General Motors and Chrysler in 2009.

"During the next week and a half, while the decision is in the hands of the employees, I do not think it is appropriate for me to make additional public comment," Corker told news outlets last week.

That stance drew praise from the UAW.

"Other politicians," UAW Region 8 Director Gary Casteel said, "should follow the lead of Senator Corker and respect these workers' right to make up their own minds."

But Corker, the former mayor of Chattanooga, subsequently announced later Monday that he would hold a press conference Tuesday to weigh in on the UAW election.

"I am very disappointed the UAW is misusing my comments to try to stifle others from weighing in on an issue that is so important to our community," Corker said in a statement.

"While I had not planned to make additional public remarks in advance of this week's vote, after comments the UAW made this weekend, I feel strongly that it is important to return home and ensure my position is clear."

Then, in response to Corker, Casteel issued this statement later Monday:

"It's unfortunate that Bob Corker has been swayed by special interests from outside Tennessee to flip-flop on his position on what's best for Chattanooga's working families.

"While outside interests and other politicians have been trying to impact the results of this vote, which would give Volkswagen workers a voice to make VW stronger in safety, job security and efficiency, improving the quality of life for everyone in Chattanooga. We believe Corker was right in his original statement that this vote should be left to the workers."

Photo credit: Reuters

UNION EXHIBIT:

UX 2

Bloomberg Businessweek

News

http://www.businessweek.com/ap/2014-02-10/tenn-dot-lawmakers-vw-incentives-threatened-by-uaw

Tenn. lawmakers: VW incentives threatened by UAW

By By Erik Schelzig February 10, 2014

NASHVILLE, Tenn. (AP) — Republican lawmakers in Tennessee on Monday threatened that the state could turn off the spigot of incentives for Volkswagen if workers at the German automaker's plant decide this week to approve union representation.

State Senate Speaker Pro Tem Bo Watson told a news conference in Chattanooga that the United Auto Workers campaign at the plant is "un-American."

"Should the workers at Volkswagen choose to be represented by the United Auto Workers, any additional incentives from the citizens of the state of Tennessee for expansion or otherwise will have a very tough time passing the Tennessee Senate," he said.

About 1,500 out of the 2,500 employees at the plant are eligible to vote in the three-day union election that begins Wednesday. Volkswagen announced earlier this year that a new SUV model will be built either in Chattanooga or in Mexico.

Republican Gov. Bill Haslam last year insisted that state incentives are not contingent on the union being rejected at the plant. Spokesman David Smith said Monday that the governor's position hasn't changed.

"Any discussions of incentives are part of additional and continued talks with VW, which we look forward to," Smith said in an email.

But state House Speaker Beth Harwell, a Nashville Republican and close Haslam ally, told The Associated Press on Monday that she shares concerns about a UAW victory at the plant.

"It would definitely put those (incentives) in jeopardy," she said. "That would jeopardize a very good arrangement for Volkswagen to locate here."

"And I hate that, because I want Volkswagen here, we're so proud and honored to have them here," she said. "But unionization is a huge setback for our state economically."

Volkswagen received a more than $500 million incentive package as part of its decision to build the plant in Chattanooga in 2008.

The UAW vote would be the first step toward creating a German-style "works council" at the plant, which would represent both blue- and white-collar employees on issues such as working conditions and plant efficiency, but not wages or benefits.

Under Tennessee law, workers would not have to join the union to be represented.

German law gives labor representatives half the seats on the Volkswagen's supervisory board, where some powerful members have raised concerns about the Chattanooga plant being alone among the company's large factories without formal labor representation.

Republican U.S. Sen. Bob Corker, who last year said Volkswagen would become a "laughingstock" for entering negotiations with the UAW, had announced last week that he would withhold public commentary on the process while the election was underway.

But in response to what he called the UAW's attempts to use his position to try to silence other critics, the former Chattanooga mayor said he will hold a news conference Tuesday to "ensure my position is clear."

UAW regional director Gary Casteel said in an email that Corker's decision to change course was driven by "special interests from outside Tennessee."

"We believe Corker was right in his original statement that this vote should be left to the workers," Casteel said.

Democratic lawmakers in the state condemned their Republican colleagues for trying to tie incentives to a rejection of the union vote at Volkswagen.

"Instead of telling them to expand, we're talking about bringing sanctions against them if they do this," said House Democratic Caucus Chairman Mike Turner of Nashville. "It's very disturbing."

Turner said that stance could have a negative impact on attracting other European businesses to Tennessee.

Labor lawyer George Barrett said the GOP move could run afoul of the national labor act, possibly giving rise to litigation.

"You're threatening to withhold a benefit you're offering to other people on the basis of membership in the unions, which is discriminatory," Barrett said.

UNION EXHIBIT:

UX 3

The New York Times | http://nyti.ms/NAAsYJ

BUSINESS DAY

Union Drive Doesn't Bother Management, but G.O.P. Fumes

By STEVEN GREENHOUSE FEB. 11, 2014

As workers at the Volkswagen plant in Chattanooga, Tenn., prepare to vote this week on whether to join the United Automobile Workers, they are facing unusual pressure from the state's Republican legislators to reject the union.

State Senator Bo Watson, who represents a suburb of Chattanooga, warned on Monday that if VW's workers voted to embrace the U.A.W., the Republican-controlled Legislature might vote against approving future incentives to help the plant expand.

"The members of the Tennessee Senate will not view unionization as in the best interest of Tennessee," Mr. Watson said at a news conference. He added that a pro-U.A.W. vote would make it "exponentially more challenging" for the legislature to approve future subsidies.

A loss of such incentives, industry analysts say, could persuade Volkswagen to award production of a new S.U.V. to its plant in Mexico instead of to the Chattanooga plant, which currently assembles the Passat.

At a news conference on Tuesday, United States Senator Bob Corker, a former mayor of Chattanooga and a Republican, also called on VW employees to reject the union. He called it "a Detroit-based organization" whose key to survival was to organize plants in the South.

"We're concerned about the impact," Mr. Corker said. "Look at Detroit."

This week's vote, which will run for three days beginning on Wednesday, is being closely watched because it could make the Volkswagen factory the first foreign-owned auto assembly plant to be unionized in the traditionally anti-union South. Some industry experts say the U.A.W.'s prospects of succeeding

have been buoyed by Volkswagen's decision not to oppose the unionization drive and even to hint support for the union.

Volkswagen is eager to have a German-style works council at the Chattanooga plant. The council would bring together managers and white- and blue-collar workers to help set factory policies and foster collaboration. Many labor experts say that to have a works council, employees first need to vote for a labor union to represent them. If the Chattanooga plant establishes a works council, it would be the first factory in the United States to do so.

"Our works councils are key to our success and productivity," said Frank Fischer, Volkswagen Chattanooga's chief executive and chairman. "It is a business model that helped to make Volkswagen the second-largest car company in the world. Our plant in Chattanooga has the opportunity to create a uniquely American works council, in which the company would be able to work cooperatively with our employees and ultimately their union representatives, if the employees decide they wish to be represented by a union."

Labor experts say a U.A.W. victory could create momentum to unionize the Mercedes-Benz plant in Vance, Ala., and the BMW plant in Spartanburg, S.C.

Concerned that a U.A.W. victory would hurt Tennessee's business climate, Gov. Bill Haslam has warned that auto parts suppliers might decide against locating in Chattanooga because they might not want to set up near a unionized VW plant.

"I think that there are some ramifications to the vote in terms of our ability to attract other suppliers," the Republican governor told the editorial board of The Tennessean last week. "When we recruit other companies, that comes up every time."

The Republican pressure has had the U.A.W. and Democratic lawmakers crying foul.

"This is an outrageous and unprecedented effort by state officials to violate the rights of employers and workers," said Mike Turner, chairman of Tennessee's House Democratic Caucus. "Republicans are basically threatening to kill jobs if workers exercise their federally protected rights to organize. When the company says they don't have a problem with it, what right does the state have to come in and say they can't do it?"

Gary Casteel, the U.A.W.'s director for the South, voiced dismay with lawmakers' threats to end future subsidies to VW.

“It’s sad that when workers exercise their legal right to form a union, some Tennessee politicians are threatening the economic well-being of communities and businesses just because workers want to have a voice in the future of Volkswagen in Chattanooga,” Mr. Casteel said.

U.A.W. officials say that numerous auto parts suppliers have set up shop near G.M.’s unionized auto plant in Spring Hill, Tenn.

The nation’s leading anti-tax activist, Grover Norquist, and his group, Americans for Tax Reform, have joined the anti-union campaign, warning that a U.A.W. victory would help bring big government to Tennessee. The group’s new affiliate, the Center for Worker Freedom, has put up 13 billboards in Chattanooga, with some calling the U.A.W. “United Obama Workers” and saying, “The UAW spends millions to elect liberal politicans” — misspelling “politicians.” Another billboard says, “Detroit: Brought to you by the U.A.W.,” and shows a photo of a Packard plant that was shuttered 55 years ago.

Chris Brown, a pro-union Volkswagen worker, objects to the Republicans’ pressure. “This decision should be between the workers, VW and the U.A.W.,” he said. “We’re the parties involved. Governor Haslam is elected to run the state. This is our workplace and our decision.”

While Republicans argue that having a union would make the plant less competitive, Mr. Brown said that having a union and works council would make it more competitive by increasing employee-management cooperation.

Volkswagen, saying it was concerned about employees’ privacy, persuaded the U.A.W. not to have organizers visit workers at home to urge them to vote for the union. In return, VW has let organizers into break rooms to answer questions about unionizing.

Mike Burton, a VW worker who is opposed to the U.A.W., says that has given the union an unfair advantage, although VW officials say anti-union and pro-union workers are free to campaign and talk to one another during breaks.

Though hit hard by the Republicans’ attacks, U.A.W. officials are predicting victory, noting that most of the plant’s workers signed cards favoring a union.

But Matt Patterson, executive director of Mr. Norquist’s Center for Worker Freedom, said: “I’m not predicting victory at all. As long as people are informed and know the facts, then I consider our job done. If workers learn all the facts and want a union, that’s their right.”

A version of this article appears in print on February 12, 2014, on page B3 of the New York edition with the

headline: Automaker Gives Its Blessings, and G.O.P. Its Warnings.

UNION EXHIBIT:

UX 4

Breaking News

Bo Watson Says VW May Lose State Help If The UAW Is Voted In At Chattanooga Plant; McCormick Urges Workers To Reject Union; Corker To Hold Press Conference; Democrats Respond

Monday, February 10, 2014 - by Hollie Webb

State Senator Bo Watson speaks at press conference
- photo by Hollie Webb

In a press conference to address the potential unionization of the Volkswagen plant, State Senator Bo Watson said, "Should the workers at Volkswagen choose to be represented by the United Auto Workers, then I believe any additional incentives from the citizens of the state of Tennessee for expansion or otherwise will have a very tough time passing the Tennessee Senate."

He said, "I do not see the members of the Senate having a positive view of Volkswagen because of the manner in which this campaign has been conducted."

He stated, "The workers that will be voting, need to know all of the potential consequences, intended and unintended, should they choose to be represented by the United Auto

Workers."

He said, "Einstein said doing the same thing over and over again and expecting a different result is truly the definition of insanity." He told the audience that the union might start out well, but said history showed it would not end that way.

He reiterated that Tennessee was a "Right to Work" state and "pro-business."

Senator Watson said, "I believe the members of the Tennessee Senate will not view unionization as in the best interest of Tennessee. The Governor, the Department of Economic and Community Development, as well as, the members of this delegation, will have a difficult time convincing our colleagues to support any Volkswagen incentive package."

He also said the unionization would make their job "exponentially more challenging."

He continued, saying, "I encourage the workers at Volkswagen to carefully consider the decision they will make this Wednesday, Thursday, and Friday. I ask that they consider the effects, not just within Volkswagen, but within our community, our state, and our region."

House Majority Leader Gerald McCormick said, "I encourage the employees of Volkswagen to reject bringing the United Auto Workers Union into the Plant and into our community. As you consider your vote, ask yourself this question - Will I be better off with the UAW? When you consider that question, I believe the answer will be NO! I wish the UAW had been willing to have an open and fair debate within the workplace. The fact that the UAW refused to allow all points of view to be heard and discussed demonstrates how they are unwilling to have an open, honest representation to ALL employees.

"The taxpayers of Tennessee reached out to Volkswagen and welcomed them to our state and our community. We are glad they are here. But that is not a green light to help force a union into the workplace. That was not part of the deal.

"To the employees of Volkswagen: You are leaders, and you are setting the course for the future of our community and our region. You have performed well. You have built the Car-of-the-Year. You have good wages and benefits. All of this happened without the heavy hand of the United Auto Workers. I urge you to keep your voice and vote NO."

A protest group in support of the union, calling themselves "Millionaires for Wealthcare," also showed up for the press conference. After Senator Watson finished, their members applauded and said, "Thank you for being champions of the 1 percent."

They held signs that read, "Bonuses for CEOS, not workers!"

The group also handed out a satirical press release. They said, "Millionaires for Wealthcare supports cheap labor, taxes on labor to support subsidies for our big corporations, no democracy in the work place, high CEO bonuses, and unlimited campaign contributions and the politicians that support those policies."

Senator Bob Corker set a press conference on the VW vote on Tuesday at 12:30 p.m. at the EPB Building.

He said Monday, "I am very disappointed the UAW is misusing my comments to try to stifle others from weighing in on an issue that is so important to our community. While I had not planned to make additional public remarks in advance of this week's vote, after comments the UAW made this weekend, I feel strongly that it is important to return home and ensure my position is clear."

The Chairman and Vice-Chairman of Tennessee's Senate Commerce and Labor Committee "expressed concern regarding the United Auto Workers (UAW) upcoming vote in Chattanooga, saying a vote for organized labor would harm Tennessee's reputation as a business-friendly state and reverse the state's recent progress in automobile-related job growth. Chairman Jack Johnson (R-Franklin) and Vice-Chairman Mark Green (R-Clarksville) said the General Assembly has worked in concert with Governors Phil Bredesen and Bill Haslam for the past several years to move forward policies to support Tennessee's competitive standing in growing and expanding new and better paying jobs in the state. The lawmakers said that pending decisions of VW employees are of statewide interest at a pivotal time when Tennessee stands currently as a national leader in job creation.

"We greatly value our auto workers, both in Middle Tennessee and in Southeast Tennessee," said Senator Johnson, a businessman whose legislative district is home to the General Motors Spring Hill plant and Nissan's North America headquarters. "Our communities are very similar with great neighborhoods, schools that focus on achievement and a local

economy that is envied by many. The automotive industry is a very important part of the quality of life we enjoy."

"As Chattanooga workers vote on the United Auto Workers presence, it is a decision that transcends just one community," he added. "There is tremendous competition for job growth among states. A vote for organized labor would impede our daily efforts to benefit Tennessee families as we compete nationally in job growth. I ask that Chattanooga lead to honor Tennessee's competitive spirit so we can continue moving our state's job growth forward. Chattanooga workers, we don't need the UAW in our state."

"In business, reputation means a lot," added Senator Green, who is a practicing physician and businessman who represents the more rural Clarksville region that competes with industry across the state-line of Kentucky. "Tennessee has developed a reputation of a top location for families and businesses because of the lower cost of living, commitment to an educated workforce and folks keeping more of our wages by holding taxes low."

"Volkswagen chose our state and your community for important reasons: Chattanooga workers have a great reputation of a great work ethic and make an excellent product. That reputation has been yours without the United Auto Workers," he continued. "The free market that VW chose in our state produces competition, empowers employees far more than a labor union, and keeps bringing jobs to Tennessee."

"In my 20 years on the hill, I've never seen such a massive intrusion into the affairs of a private company," said House Democratic Leader Craig Fitzhugh. "When management and workers agree—as they do at Volkswagen—the state has no business interfering. Words have consequences and these type of threats could have a ruinous effect on our state's relationships with not just Volkswagen, but all employers."

"This is an outrageous and unprecedented effort by state officials to violate the rights of employers and workers," said House Democratic Caucus Chairman Mike Turner. "Republicans are basically threatening to kill jobs if workers exercise their federally protected rights to organize. When the company says they don't have a problem with it, what right does the state have to come in and say they can't do it?"

Voting will take place at Volkswagen starting on Wednesday and ending on Friday on whether to allow the United Auto Workers to represent workers at the plan.

Protestors
- Photo2 by Hollie Webb

UNION EXHIBIT:

UX 5

Business Entity Detail

Available Entity Actions

File Annual Report (after 12/01/2014)

Certificate of Existence

More

Entity details cannot be edited. This detail reflects the current state of the filing in the system.

Return to the Business Information Search.

000745893: Corporation Non-Profit - Domestic

Printer Friendly Version

Name: Southern Momentum, Inc.

Status: Active
Formed in: TENNESSEE
Fiscal Year Close: December
Term of Duration: Perpetual
Principal Office: ONE CENTRAL PLAZA
835 GEORGIA AVE STE 800
CHATTANOOGA, TN 37402-2225 USA
Phone: (423) 648-7894
Mailing Address: ONE CENTRAL PLAZA
835 GEORGIA AVE STE 800
CHATTANOOGA, TN 37402-2225 USA
AR Exempt: No
Public Benefit Corporation: Yes

Initial Filing Date: 01/31/2014
Delayed Effective Date:
AR Due Date: 04/01/2015
Inactive Date:

Obligated Member Entity: No

Assumed Names | History | **Registered Agent**

Agent Name: EVANS HARRISON HACKETT PLLC
Agent Address: 835 GEORGIA AVE
STE 800
ONE CENTRAL PLAZA
CHATTANOOGA, TN 37402-2225 USA

UNION EXHIBIT:

UX 6

VW union vote could halt state incentives

Brent Snavely, Detroit Free Press *2:52 p.m. EST February 10, 2014*

(Photo: Erik Schelzig AP)

A crusade by anti-union forces in Tennessee, including the state's governor and a senior senator, now is as much a fight with Volkswagen management as with the United Auto Workers union.

Volkswagen's neutrality has been challenged by opposition groups. They charge that the German automaker is, in fact, carefully orchestrating a plan to help the UAW win the election.

Some 1,500 VW workers at the plant vote Wednesday through Friday on UAW representation. The secret balloting will be overseen by the National Labor Relations Board.

On Monday, state Republican leaders accused Volkswagen of supporting the UAW and they threatened to withhold any tax incentives for future expansion of the three-year-old assembly plant in Chattanooga if workers vote to join the UAW.

"Should the workers at Volkswagen choose to be represented by the United Auto Workers, then I believe any additional incentives from the citizens of the State of Tennessee for expansion or otherwise will have a very tough time passing the Tennessee Senate," State Sen. Bo Watson, R-Chattanooga, said in a statement sent to the *Free Press.*

A worker opposition group called Southern Momentum echoed that position in a statement.

"Further financial incentives — which are absolutely necessary for the expansion of the VW facility here in Chattanooga — simply will not exist if the UAW wins this election," Maury Nicely, a Chattanooga labor lawyer representing Southern Momentum said.

Today's threat comes less than 48 hours after Volkswagen said it favors a German-style works council with union representation.

"Outside political groups won't divert us from the work at hand: innovating, creating jobs, growing, and producing great automobiles," said Sebastian Patta, Volkswagen Chattanooga vice president of human resources.

The anti-union forces now are countering that VW isn't neutral, it is pro-union.

Volkswagen said workers in favor of and opposed to UAW representation have had opportunities to distribute information and talk to other workers.

"U.S. labor law requires VW to have a union in order for the works councils to be legal. If Volkswagen workers vote for the union it is expected to have a ripple effect on other auto manufacturers in the southern United States and their suppliers," according to Art Wheaton, automotive industry expert and senior extension associate at Cornell University.

"UAW International President Bob King has staked his legacy and reputation on the ability to organize a foreign automaker in the South. Volkswagen's global corporate philosophy and strategic advantage is having 'works councils' represent the plant workers and management in major decisions including locating new vehicle production," Wheaton noted.

In January, Volkswagen said it will invest $7 billion in North America over the next five years in its quest to sell more than 1 million Volkswagen and Audi vehicles in the U.S. by 2018.

A new SUV is seen as key to reaching that goal.

Martin Winterkorn, Volkswagen's global CEO, would not say where the SUV would be built, but Chattanooga is a likely site. Winterkorn said the decision would not be influenced by whether workers vote to join the UAW.

Volkswagen also has a plant in Puebla, Mex.

If workers at the Volkswagen plant in Tennessee vote for UAW representation the union and company will form a German-style works council at the plant.

A 20-page legal agreement for a union election between the UAW and Volkswagen says that the UAW has agreed to delegate to the works council many of the functions and responsibilities ordinarily performed by unions.

"Our works councils are key to our success and productivity. It is a business model that helped to make Volkswagen the second largest car company in the world," Frank Fischer, chairman and CEO of Volkswagen Chattanooga said in a statement.

UNION EXHIBIT:

UX 7

NO TO UNINFORMED AUTO WORKERS

Chattanooga, Tennessee

Election results are in.
Thank you to everyone for your hard work and realization
that we don't need the UAW to have a voice.
712 - 626 against the UAW.

Losing Volkswagen Was Nothing Compared With Next UAW Fear

Analysis: How UAW Bosses Rode Into Chattanooga
And Promptly Fell Off Their Trojan Horse

"What few, including the UAW, realize is that the union's defeat in Chattanooga is more of a David vs. Goliath story and how Goliath (the UAW) handed David (the employees) the stones."

Wall Street Journal by Neal Boudette

VW Workers in Chattanooga Reject Auto Workers Union

Wall Street Journal - Market Watch

Union Suffers Big Loss at Tennessee VW Plant

Nooga.com By Chloé Morrison

UAW loses representation vote at Volkswagen Chattanooga

Wall Street Journal: Volkswagen's Union Gamble

An interesting quote from the Wall Street Journal:

"Volkswagen's un-neutral ***"neutrality agreement" with the UAW is arguably a violation of Taft-Hartley's prohibition on employers giving a "thing of value" to a union seeking to organize its employees****. The Supreme Court last year dismissed as improvidently grantedMulhall v. Unite Here Local 355, which challenged the legality of such business-labor collusion.* ***The Chattanooga campaign could provide the judiciary an opportunity to revisit the issue."***

UAW President Bob King:

"We're not really giving up control [at VW]."

VW NEUTRALITY AGREEMENT EXPOSES UAW'S SECRET SELLOUT OF VOLKSWAGEN TEAM MEMBERS

TOP 10 REASONS WHY VW TEAM MEMBERS SHOULD VOTE NO TO THE UAW

RIGHT-TO-WORK? UNION PUBLISHES NAMES OF MEMBERS WHO OPTED-OUT IN 'FREELOADERS LIST'

Three videos the UAW does not want you to see.

Click on each video to discover WHY.

Why VW Team Members are Opposed to the UAW from Otto Worker on Vimeo.

Volkswagen Team Member Testimonials from Otto Worker on Vimeo.

Victim of UAW's Influence at Westmoreland from Otto Worker on Vimeo.

VW TEAM MEMBERS SPEAK OUT ON WHY THE UAW IS WRONG FOR CHATTANOOGA

[Video] The UAW Is 'Mortally Wounded' And 'Desperate'

VW May Lose State Help If The UAW Is Voted In At Chattanooga Plant

The UAW Was Opposed To VW Jobs In Chattanooga Before It Was For Them

Poll: Majority of Hamilton County voters think UAW will hurt economic development

State officials call on outside special interests to let VW workers decide - HEY! THIS WEBSITE IS DONE BY A VOLKSWAGEN EMPLOYEE ON HIS OWN DIME AND HIS OWN TIME. OVER 600 OTHER VOLKSWAGEN EMPLOYEES AGREE WITH THE VIEWS ON THIS SITE. NO OUTSIDERS, **EMPLOYEES**. THE THUGS IN OUR CAFETERIAS ARE THE OUTSIDERS.

Latest News

February 13, 2014 Reuters by Bernie Woodall
U.S. senator drops bombshell during VW plant union vote
and
February 13, 2014 Reuters by Bernie Woodall
UPDATE 2-VW: Union vote has nothing to do with adding vehicle line

February 13, 2014**College Athletes Are 'Employees,' Says NU Football Players' Attorney. What's Next?**

Feb. 12, 2014 7:08 p.m. ET
Wall Street Journal (Editorial): Volkswagen's Union Gamble

February 9, 2014 by Roy Exum
Roy Exum: VW's Dance With The Devil

February 9, 2014 by Neal Boudette Wall Street Journal
UAW, Auto Industry Hold Breath on VW Vote
Balloting This Week Will Determine if Chattanooga Plant Unionizes

February 9, 2014 Chattanooga Times Free Press
Pro-, anti-UAW activity gears up ahead of VW election

February 9, 2014 Detroit Free Press
High-stakes UAW vote at Tennessee Volkswagen plant is this week

February 8, 2014 WRCB
VW Chattanooga releases statement on upcoming representation election -

February 7, 2014 National Right to Work Committee
Workers Should Be Given All the Facts Before the Election So That They Can Make an Informed Choice

February 6, 2014
When Union Officials 'Won't Answer Any Public Questions' or Even 'Allow Questions to Be Asked — Something Stinks'

February 7, 2014 Wall Street Journal by Neal Boudette
VW and UAW 'Coordinating' Behavior During and After Union Vote
Auto Maker and Union Set Road Map on Conduct During, After Election

Latest Video

WRCB - Union Vote at VW Makes National News -

Historic Video

NUMMI Union Workers Getting Told They are Out of a Job

February 7, 2014 Wall Street Journal

UAW to To Stop Chattanooga Organizing Drive If VW Workers Vote Against Union

Tenn. VW workers to vote on German-style union

Auto Workers Try a New Angle at Volkswagen - Good thought piece. Sidebars will raise your eyebrows!

February 5, 2014 Times Free Press by Mike Pare

Anti-union group hits VW meetings

February 6, 2014 The Washington Times

EDITORIAL: VW workers face a choice in Chattanooga - The union that destroyed Detroit invades the South

February 6, 2014 Times Free Press

Tennessee Gov. Bill Haslam says UAW could hurt recruitment of VW suppliers

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Click HERE to see other articles on the 'VW / UAW in the News' page.

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Informed and Aware.

UNION EXHIBIT:

UX 8

CORKER IN THE NEWS

CORKER STATEMENT ON VOLKSWAGEN ELECTION RESULTS

February 14, 2014

CHATTANOOGA, Tenn. – U.S. Senator Bob Corker, R-Tenn., today released the following statement. “Needless to say, I am thrilled for the employees at Volkswagen and for our community and its future,” said Corker. As mayor of Chattanooga from 2001-2005, Corker worked with officials and community leaders to develop the 1,200 acre Enterprise South Industrial Park, which is now home to Volkswagen's North American manufacturing headquarters. Much of the negotiation that led to Volkswagen choosing Chattanooga occurred around the dining room table of Corker’s Chattanooga hom... [continue]

Featured Videos

December 1, 2013 - Senator Bob Corker, R-Tenn., ranking member of the Foreign Relations Committee, talked about Obamacare and Iran on CBS' "Face the Nation." View All Videos

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Feb 13th – Corker Statement on Expansion Conversations
Feb 12th – Corker: Conversations Today Indicate a Vote Against UAW is a Vote for SUV Production
Feb 4th – Corker: CBO Report is "Sobering"
Jan 31st – Corker: Obama Administration "Now Out of Excuses" on Keystone XL Pipeline

CAP Spending

$18,086,765,367,003.09
$57,727.51 per person

PHOTO GALLERY

December 5, 2013 – Senator Bob Corker, R-Tenn., meets with Tennessee sailors and marines deployed to Bahrain with the U.S. Fifth Fleet.

Winner of the CMF Silver Mouse

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Feb 12 2014

CORKER: CONVERSATIONS TODAY INDICATE A VOTE AGAINST UAW IS A VOTE FOR SUV PRODUCTION

CHATTANOOGA, Tenn. – U.S. Senator Bob Corker, R-Tenn., today released the following statement regarding the ongoing vote at the Volkswagen plant.

"I've had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga," said Corker.

As mayor of Chattanooga from 2001-2005, Corker worked with officials and community leaders to develop the 1,200 acre Enterprise South Industrial Park, which is now home to Volkswagen's North American manufacturing headquarters. Much of the negotiation that led to Volkswagen choosing Chattanooga occurred around the dining room table of Corker's Chattanooga home.

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Permalink: http://www.corker.senate.gov/public/index.cfm/2014/2/corker-conversations-today-indicate-a-vote-against-uaw-is-a-vote-for-suv-production

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Feb 14 2014

CORKER STATEMENT ON VOLKSWAGEN ELECTION RESULTS

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“Needless to say, I am thrilled for the employees at Volkswagen and for our community and its future,” said Corker.

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Permalink: http://www.corker.senate.gov/public/index.cfm/2014/2/corker-statement-on-volkswagen-election-results

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UNION EXHIBIT:

UX 9

U.S. senator drops bombshell during VW plant union vote

Thu, Feb 13 2014

By Bernie Woodall

CHATTANOOGA, Tennessee (Reuters) - U.S. Senator Bob Corker of Tennessee said on Wednesday he has been "assured" that if workers at the Volkswagen AG plant in his hometown of Chattanooga reject United Auto Worker representation, the company will reward the plant with a new product to build.

Corker's bombshell, which runs counter to public statements by Volkswagen, was dropped on the first of a three-day secret ballot election of blue-collar workers at the Chattanooga plant whether to allow the UAW to represent them.

Corker has long been an opponent of the union which he says hurts economic and job growth in Tennessee, a charge that UAW officials say is untrue.

"I've had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga," said Corker, without saying with whom he had the conversations.

In the past few weeks, Volkswagen officials have made several statements that the vote will have no bearing on whether the SUV will be made at the Chattanooga plant or at a plant in Puebla, Mexico.

National Labor Relations Board expert Kenneth G. Dau-Schmidt, who is professor of labor at the University of Indiana-Bloomington, said Corker was trying to intimidate workers into voting against the union.

"I'm really kind of shocked at Corker's statement," said Dau-Schmidt. "It's so inconsistent with what VW has been saying and VW's labor relations policy in general."

The Indiana professor also said Corker's comments "would be grounds to set the election aside and have to run it all over again at a later date" because it could be ruled to be interfering to the point that it is against federal labor law.

A spokeswoman for Corker did not respond when asked whether the senator also meant that a vote for the UAW would mean that the plant would not get the new product, which could create an estimated 1,500 new jobs.

Volkswagen officials did not return calls and emails for comment on Corker's statement.

Mike Burton of Southern Momentum, an anti-UAW group of plant workers, said Corker's statement makes sense.

"We are in a battle with Mexico on where this new product goes," said Burton, "and it stands to reason that the union will add costs. We need to keep costs down to fight for that new product."

Another labor expert, Harley Shaiken of the University of California-Berkeley, said, "The senator's comments amount to economic intimidation that undermines the whole nature of union representation elections."

Shaiken often advises UAW officials.

"If the senator's statement doesn't violate the letter of the law, it certainly violates the spirit of the law," Shaiken said.

UAW REACTION

Gary Casteel, UAW regional director for a 12-state area that includes Tennessee, said on Wednesday night, "Corker's statement is in direct contradiction to Volkswagen's statements.

"They have specifically said that this vote will have no bearing on the decision of where to place the new product."

In the past, Casteel has said that Volkswagen's Chattanooga plant, opened in 2011, needs a second product to survive. It has built the compact Passat sedan since it opened.

The plant has about 1,550 Volkswagen workers eligible to vote in the election, which is supervised by the National Labor Relations Board.

Pro- and anti-UAW workers said they were not sure if snowy weather will affect turnout for the vote, which ends on Friday when the plant does not produce cars.

On Wednesday - day one of the vote - the night shift was canceled after only one car was produced because snow prevented

workers reaching the plant, said two VW employees who wished to remain anonymous.

A source familiar with the plans of the Volkswagen supervisory board which makes decisions on product placement said that the board has not yet made a decision on the issue, and that it will take it up in a meeting on February 22.

Corker on Tuesday returned from Washington to hold a Tuesday press conference at his downtown Chattanooga senate office in order to speak against the UAW in time for the worker vote at the plant.

(Reporting by Bernie Woodall; Editing by Christopher Cushing)

UNION EXHIBIT:

UX 10

Feb 13 2014

CORKER STATEMENT ON EXPANSION CONVERSATIONS

CHATTANOOGA, Tenn. – U.S. Senator Bob Corker, R-Tenn., today released the following statement.

"Believe me, the decisions regarding the Volkswagen expansion are not being made by anyone in management at the Chattanooga plant and we are also very aware Frank Fischer is having to use old talking points when he responds to press inquiries," said Corker. "After all these years and my involvement with Volkswagen, I would not have made the statement I made yesterday without being confident it was true and factual."

As mayor of Chattanooga from 2001-2005, Corker worked with officials and community leaders to develop the 1,200 acre Enterprise South Industrial Park, which is now home to Volkswagen's North American manufacturing headquarters. Much of the negotiation that led to Volkswagen choosing Chattanooga occurred around the dining room table of Corker's Chattanooga home.

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Permalink: http://www.corker.senate.gov/public/index.cfm/2014/2/corker-statement-on-expansion-conversations

UNION EXHIBIT:

UX 11

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Corker stands by claim VW will expand if UAW loses

By Associated Press, Published: February 13

NASHVILLE, Tenn. — U.S. Sen. Bob Corker on Thursday stood by his statements that Volkswagen is ready to announce it will expand its lone U.S. plant in Chattanooga if workers there reject the United Auto Workers.

But the Tennessee Republican said in a phone interview with The Associated Press that he didn't inquire whether the German automaker would scrap plans to build a new midsized SUV at the plant if the UAW wins.

About 1,500 workers at the plant are eligible to cast votes in the three-day union election that ends Friday.

Corker declined to say whom at Volkswagen he had spoken to and how they were in a position to know what the German automaker's decision would be.

While the claimed link between the union vote and the expansion decision has long been denied by company officials, Corker said his sources weren't concerned about the release of a potentially conflicting information.

"I don't think there's any question that a public statement was expected to made," he said. "What I did was very, very appropriate."

Corker's comments could raise questions about interference in a union vote.

John Logan, a labor and employment studies professor at San Francisco State University, said politicians are usually not included in rules governing the behavior of the company, unions and workers during an election.

"But here it could make a difference that he is attributing these comments to VW, even though they appear to be untrue," Logan said in an email.

Corker first made his unattributed claim in a news release on Wednesday night, which promoted Frank Fischer, the CEO of the Volkswagen plant in Chattanooga, to issue a statement that the company's position remains unchanged.

"There is no connection between our Chattanooga employees' decision about whether to be represented by a union and the decision about where to build a new product for the U.S. market," he said.

That didn't dissuade Corker, who issued another statement reiterating his original claim Thursday morning. He defended the move in the phone interview.

"There is no way I'd put out statement like I put out unless I was 1,000 percent that it was accurate in every way," Corker said. "Not only from the standpoint of my own credibility, but also knowing the stakes that are

here, and not wanting to say something that in any way would be off the point."

UAW supporters at the plant said Corker's comments would not turn the vote against the union.

"It's more of an insult than anything," David Gleeson, a team leader on the plant's door line, said in a phone interview.

"He's trying to threaten us with future expansion, and he's actually making workers angry at the plant," he said.

Volkswagen has said a new SUV for the U.S. market will be built either in Chattanooga or in Mexico. The Chattanooga plant makes the midsized Passat sedan, and increased production is seen as crucial to improving efficiency at the facility.

Republican politicians have argued that the introduction of the UAW at the plant would hurt the region's ability to attract manufacturing jobs to the state and region.

UNION EXHIBIT:

UX 12

Breaking News

VW Chattanooga President Disputes Corker Statement On New Line Of SUVs And Union Vote; Corker Retorts

Thursday, February 13, 2014

Frank Fischer, CEO and chairman of Volkswagen Chattanooga**,** on Thursday disputed a statement made by Senator Bob Corker at a press conference on Wednesday.

Mr. Fischer said, "There is no connection between our Chattanooga employees' decision about whether to be represented by a union and the decision about where to build a new product for the U.S. market."

Later in the morning, Senator Corker replied, "Believe me, the decisions regarding the Volkswagen expansion are not being made by anyone in management at the Chattanooga plant and we are also very aware Frank Fischer is having to use old talking points when he responds to press inquiries.

"After all these years and my involvement with Volkswagen, I would not have made the statement I made yesterday without being confident it was true and factual."

Senator Corker said Wednesday that Chattanooga will be getting the production of a second line of vehicles as long as the UAW is not voted in by employees.

He said, "I've had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga."

His staff said, "As mayor of Chattanooga from 2001-2005, worked with officials and community leaders to develop the 1,200 acre Enterprise South Industrial Park, which is now home to Volkswagen's North American manufacturing headquarters.

"Much of the negotiation that led to Volkswagen choosing Chattanooga occurred around the dining room table of Corker's Chattanooga home."

The voting began Wednesday and continues through Friday.

VW officials said, "Volkswagen has invested $1 billion in the local economy for the Chattanooga plant and has created more than 5,000 jobs in the region. According to independent studies, the Volkswagen plant is expected to generate $12 billion in income growth and an additional 9,500 jobs related to its investment."

UNION EXHIBIT:

UX 13


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2014
No2uaw shared a link.
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Interesting statement here...
"A source familiar with the plans of the Volkswagen supervisory board which makes decisions on product placement said that the board has not yet made a decision on the issue, and that it will take it up in a m... See More
Tennessee senator says new VW product on way if UAW union rejected | Reuters
uk.reuters.com
CHATTANOOGA, Tenn., Feb. 12 (Reuters) - U.S. Senator BobCorker of Tennessee said on Wednesday that if workers at theVolkswagen AG plant in his hometown of Chattanoogareject United Auto Worker...
Like · Comment · Share
8 people like this.
Top Comments
Write a comment...
Jeffrey Jacobs
I'm proud to say that this has been a union show... and I have never worked with a more professional group of people in my life. They get paid good money and they do a good job. When the (stuff) is on this show would show me their new car or home, I tell I played a big role in their success, as they did mine. That was just a great feeling.
Jay Leno
#unions4workers
people are on payroll when the vote occurs, they are to be allowed to vote. Often people change their minds if another job falls through.
Like · 1 · February 13 at 11:04pm
Write a reply...
Jonathan Holder The vote is in but it is in a challenged envelope
Like · Reply · 5 · February 13 at 4:17pm
View 15 more comments
No2uaw
February 13
Well, VW's entire Global Works Council is at our plant today.
No word whether the outsider Bob King is coming to town too.
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3 people like this.
Write a comment...
No2uaw shared a link.
February 13
Corker Statement on Expansion Conversations - News - News Room - United States Senator Bob...
www.corker.senate.gov
"Believe me, the decisions regarding the Volkswagen expansion are not being made by anyone in management at the Chattanooga plant and we are also very aware Frank Fischer is having to use old talking points...
Like · Comment · Share
2 people like this.
Robert Pajkovski commented on Benjamin Davis's link: "What few...
Michelle Belaskie likes Scotty Brown's status.
Bruce Giffin likes Harvey Ovshinsky's link.
Emily Everett likes Grosse Pointe Animal Adoption Society (GPAAS)'s link.
Janice Taube commented on Melody Billings's link: "have to admit this is funny even though I am a liberal"
Emilio Leslie listened to Knifeman by The Bronx on Spotify.
Robert Pajkovski likes Володимир Демиденко's link.
Lisa Hillyard shared A Beautiful Mess Inside's photo.
Janice Taube likes Harleys For Heroes's photo.
Emilio Leslie listened to Bullhead's Psalm by Baroness on Spotify.
Elena Herrada and Bill Johnson are now friends.
Roger Kerson likes Raise Michigan.
Tracy Romero Getting some loving from our man!!
Turn on chat to see who's available.
Search
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Like
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2014
View 4 more comments
No2uaw shared a link.
February 12
Our choices just became even clearer...
UAW or B-SUV...
Chattanooga Will Get New Line Of SUVs If UAW Is Not Approved
www.chattanoogan.com
Senator Bob Corker said Wednesday that Chattanooga will be getting the production of a second line of vehicles as long as the UAW is not voted in by employees...
Like · Comment · Share
1
26 people like this.
Top Comments
Write a comment...
Mark Moses I don't know if Corker's comments are right or not. I do know that 15 years from now either the UAW will be gone or the Volkswagen Chattanooga plant will be gone. There won't be big taxpayer bailouts for VW like GM gets.
Like · Reply · February 13 at 5:22am
Byron Spencer Sounds Like Bob Corker is caught lying at this point.
Like · Reply · February 13 at 1:19pm
View 4 more comments
No2uaw
February 12
We're hearing that there's going to be some sort of an announcement regarding the B-SUV on the news tonight...
No2uaw shared a link.
February 12
Due to the early hour, some of our fellow Team Members may have missed what we were handing out this morning.
Here it is...
An Open Letter To UAW President Bob King (We're Not Outsiders)
www.no2uaw.com
Like · Comment · Share
1
33 people like this.
Top Comments
Write a comment...
Mark Moses I love the nonsensical crap. Divided we beg??? What UAW contract comes even close to the package at VW? Or are you too mathematically challenged to look at anything except your hourly wage - which is already as good as the UAW. They're promising yo... See More
Like · Reply · 3 · February 13 at 11:28am
Charles Thomas Work union! United we bargain, divided we beg. If the Republican party don't want you to go union that should tell you they don't want you to live better. Because then they lose control over you.
Like · Reply · 5 · February 13 at 10:03am
View 17 more comments
No2uaw shared a link.
February 12
If you haven't voted, make sure you get out to vote!
Robert Pajkovski commented on Benjamin Davis's link: "What few...
Michelle Belaskie likes Scotty Brown's status.
Bruce Giffin likes Harvey Ovshinsky's link.
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Elena Herrada and Bill Johnson are now friends.
Roger Kerson likes Raise Michigan.
Tracy Romero Getting some loving from our man!!
Turn on chat to see who's available.
Search
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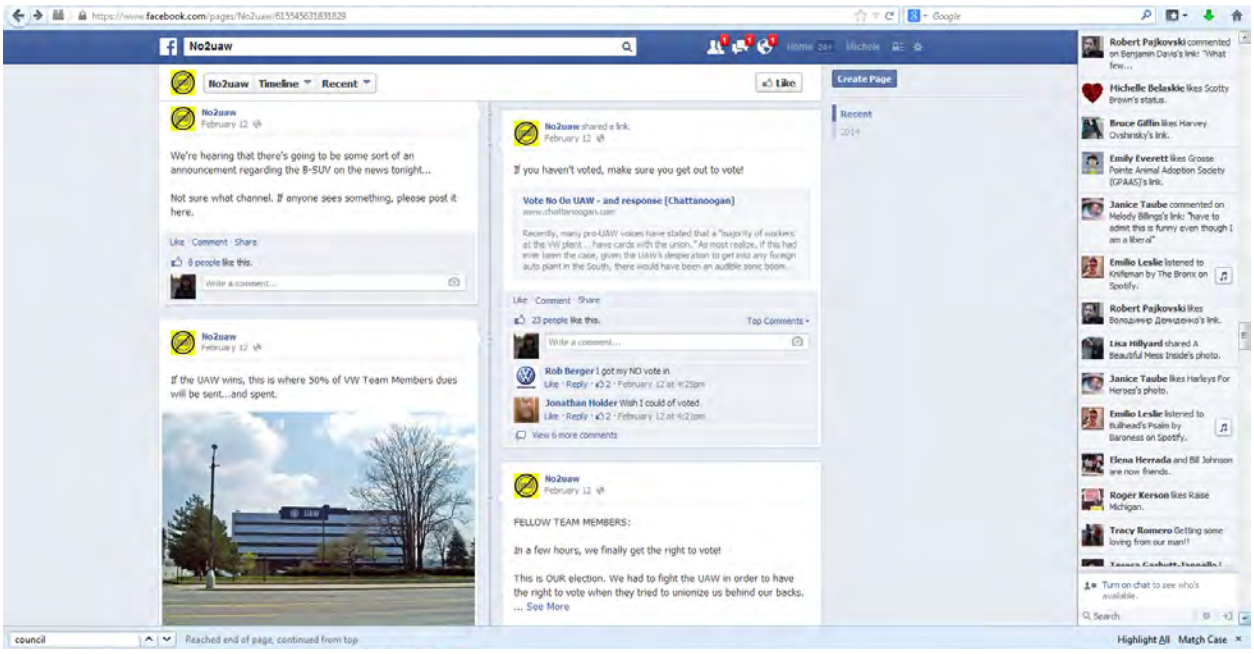
Highlight All Match Case


https://www.facebook.com/pages/No2uaw/615545631831828
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Michele
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Like
Create Page
No2uaw
February 12
We're hearing that there's going to be some sort of an announcement regarding the B-SUV on the news tonight...
Not sure what channel. If anyone sees something, please post it here.
Like · Comment · Share
8 people like this.
Write a comment...
No2uaw
February 12
If the UAW wins, this is where 50% of VW Team Members dues will be sent...and spent.
No2uaw shared a link.
February 12
If you haven't voted, make sure you get out to vote!
Vote No On UAW - and response [Chattanoogan]
www.chattanoogan.com
Recently, many pro-UAW voices have stated that a "majority of workers at the VW plant... have cards with the union." As most realize, if this had ever been the case, given the UAW's desperation to get into any foreign auto plant in the South, there would have been an audible sonic boom...
Like · Comment · Share
23 people like this.
Top Comments
Write a comment...
Rob Berger I got my NO vote in
Like · Reply · 2 · February 12 at 4:25pm
Jonathan Holder Wish I could of voted
Like · Reply · 2 · February 12 at 4:21pm
View 6 more comments
No2uaw
February 12
FELLOW TEAM MEMBERS:
In a few hours, we finally get the right to vote!
This is OUR election. We had to fight the UAW in order to have the right to vote when they tried to unionize us behind our backs.
... See More
Recent
2014
Robert Pajkovski commented on Benjamin Davis's link: "What few...
Michelle Belaskie likes Scotty Brown's status.
Bruce Giffin likes Harvey Ovshinsky's link.
Emily Everett likes Grosse Pointe Animal Adoption Society (GPAAS)'s link.
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Roger Kerson likes Raise Michigan.
Tracy Romero Getting some loving from our man!!
Turn on chat to see who's available.
Search
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Highlight All
Match Case

Exhibit B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON, *et alia*,
(Employee-Intervenors).

Case No. 10-RM-121704

MOTION TO INTERVENE

Pursuant to § 102.65 of the NLRB's Rules and Regulations and the Administrative Procedures Act, 5 U.S.C. § 554 *et alia*, Michael Burton, Michael Jarvis, David Reed, Thomas Haney and Daniele Lenarduzzi ("Employee-Intervenors") move to intervene to oppose the objections filed by the United Auto Workers union to overturn the election that they and their co-workers won on February 14, 2014.

As established below, the Employee-Intervenors must be permitted to intervene because their employer and the UAW are colluding to force unionization onto them and their co-workers. Because of this collusion, no current party will defend the outcome of the election and the rights and interests of employees opposed to UAW representation. Intervention of the Employee-Intervenors will ensure that the Board has a complete

record to adjudicate the UAW's objections. The Employee-Intervenors are confident that if they are heard, and a complete record concerning the UAW's objections is made, the Region will uphold the employee free choice manifested on February 12-14 when employees rejected UAW representation by a vote of 712-626, with almost 90% of eligible voters casting ballots.

I. FACTS

For over two years, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America ("UAW") has been attempting to organize workers of Volkswagen Group of America, Inc. ("Volkswagen") at its automobile manufacturing center in Chattanooga, Tennessee. Approximately 1,500 employees work in production and maintenance classifications within the bargaining unit under consideration. The UAW's organizing efforts centered on collecting authorization cards for "card check" recognition by Volkswagen. The Employee-Intervenors consistently exercised their Section 7 rights to oppose UAW unionization. (*See* Employee-Intervenors' Declarations, attached). Employee-Intervenors are and were leaders of the opposition to UAW representation.

On September 11, 2013, UAW Regional Director Gary Casteel announced to great public fanfare that a "majority" of workers at Volkswagen's Chattanooga plant had signed authorization cards designating the UAW as their exclusive bargaining

representative.[1] Armed with its claimed authorization card majority, the UAW simultaneously demanded "voluntary recognition" from Volkswagen. (*See* Advice Memorandum in the related ULP cases, Nos. 10-CB-114152 *et alia,* dated January 17, 2014).

Upon learning of the UAW's claim to majority employee support and its demand for recognition from Volkswagen, the Employee-Intervenors and others promptly collected approximately 600 signatures of Volkswagen employees opposed to UAW representation. Those signatures "against union representation," which also revoked any prior support for the UAW that a signer may have expressed, were given to Volkswagen management. The Employee-Intervenors also filed unfair labor practice charges that challenged numerous aspects of the UAW's "card check" efforts and the pre-election statements and conduct of Volkswagen officials. *See* Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669, 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221, 10-CB-115280 and 10-CB-115311.

After receiving those unfair labor practice charges and the 600 signatures against UAW representation, Volkswagen did not voluntarily recognize the UAW. However, those two parties then negotiated, and on January 27, 2014 signed, a collusive "Neutrality Agreement" to govern the unionization process. (Copy attached as Ex. 1). This Neutrality

[1] http://www.wrcbtv.com/story/23405004/uaw-majority-at-vw-plant-have-signed-union-cards.

Agreement required Volkswagen to file the petition for the instant RM election and to work hand-in-glove with the UAW to ensure an extraordinarily expedited election schedule within just nine days of the petition's filing. (*See* Stipulated Election Agreement filed by Volkswagen and the UAW with the NLRB on February 3, 2014). Volkswagen also agreed to provide UAW's non-employee organizers with broad in-plant access and paid employees to attend UAW captive audience speeches, and to "align messages and communications [with the UAW] through the time of the election and the certification of the results by the NLRB." (Neutrality Agreement at 6). However, during the nine-day election campaign period, Volkswagen denied the Employee-Intervenors and other groups opposed to UAW representation similar access and benefits, despite their written requests. Notwithstanding Volkswagen's heavy-handed assistance to the UAW, employees rejected the UAW's representation by a vote of 712 to 626, with almost 90% voting. The UAW has now filed objections challenging its election loss.

Volkswagen and the UAW continue to collude with one another. UAW President Bob King was asked last week about the UAW's legal option to file election objections and stated: "We're obviously communicating with our great allies in the Volkswagen Works Council, Volkswagen management and IG Metall in Germany." http://www.timesfreepress.com/news/2014/feb/19/clock-ticking-for-uaw-in-vw-vote/. Volkswagen, a "great ally" of the UAW and a party closely "aligned" with it, now stands mute with respect to the objections, and apparently will continue to do so.

Under these circumstances, basic notions of fairness and due process, and the spirit and letter of NLRA Sections 7 and 9, require granting this Motion to Intervene. If the Employee-Intervenors are allowed to become parties to these proceedings, they will: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by government officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW. (*See* Declarations of Employees Burton, Jarvis, Haney, Reed and Lenarduzzi, attached).

II. STANDARD FOR INTERVENTION

Section 102.65(b) of the NLRB Rules and Regulations states:

> Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person *claims to have an interest in the proceeding*. The Regional Director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(Emphasis added). The standard for intervention is met when a person has an "interest in the proceeding." *Id*.

This "interested person" standard is not a high one. For example, a union that enjoys the support of only *one employee* is permitted to participate in election proceedings as a "participating intervenor." *See Union Carbide & Carbon Corp*., 89

N.L.R.B. 460 (1950). Here, a majority of Volkswagen employees voted to reject the UAW, which is the position the Employee-Intervenors advocate. Moreover, as the Employee-Intervenors' Declarations show, they have been leaders in the employee effort to keep the UAW out of the plant, an activity that Sections 7 and 9 of the Act directly protect. This leadership includes filing ULP charges in related cases that challenged numerous aspects of the UAW's "card check" efforts and the pre-election statements and conduct of Volkswagen officials.[2] The Employee-Intervenors represent the interests of over half of the bargaining unit.

Section 102.65(b)'s criteria for intervention is analogous to § 554 of the Administrative Procedures Act ("APA"), which states that an "agency shall give all *interested parties* opportunity for . . . (1) submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554 (emphasis added). Under § 554 of the APA, persons "with a concrete interest *however small* in the proceeding have a right to intervene." *American Trucking Ass'n v. United States,* 627 F.2d 1313, 1320 (D.C. Cir. 1980) (emphasis added). In *Camay Drilling Co.*, 239 N.L.R.B. 997, 998-99 (1978), the Board permitted trustees of a pension fund to intervene based on this standard.

[2] *See* Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669, 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221, 10-CB-115280 and 10-CB-115311.

III. LEGAL ARGUMENT IN SUPPORT OF INTERVENTION

A. Employees Have Been Allowed to Intervene in Election Proceedings.

Employees must move to intervene in NLRB election proceedings to file or oppose objections because they are not automatically parties to representation cases. *See Clarence E. Clapp*, 279 N.L.R.B. 330, 331 (1986); *Westinghouse Elec. Corp.*, 78 N.L.R.B. 315, 316 n.2 (1948). Here, the Employee-Intervenors move to intervene to become full parties to this case and protect the election they just won. If their motion is granted, they can participate in any hearing or other proceedings concerning the UAW's objections. *See* NLRB Rule & Reg. § 102.65(b) (an "intervenor shall thereupon become a party to the proceeding"); *Belmont Radio Corp.*, 83 N.L.R.B. 45, 46 n.3 (1949) (rejecting argument that "Intervenors had no standing to file exceptions in this case because they are not parties to the proceeding" because "[t]he Intervenors acquired the status of parties when the Board in its discretion permitted them to intervene. . . .").

The Board has permitted employees to intervene in post-election proceedings on a number of occasions. *See Shoreline Enters. of America*, 114 N.L.R.B. 716, 717 n.1 (1955) ("we shall permit these employees to intervene for the limited purpose of entering exceptions to that part of the Regional Director's report on objections which relates to their nonparticipation in the election"); *Belmont Radio*, 83 N.L.R.B. at 46 n.3 (permitting employees to intervene and file exceptions related to challenged ballots); *Western Electric Co.*, 98 N.L.R.B. 1018, 1018 n.1 (1952) (permitting "a group of employees affected by

this proceeding" to intervene in a certification election and file motions regarding the appropriateness of the bargaining unit); *Taylor Bros.*, 230 N.L.R.B. 861 n.1 & 862 (1977) (employees permitted to intervene in unfair labor practice proceedings against their employer to protect their interest in voting on their bargaining representative).

Similarly, the Supreme Court permitted an individual to intervene in a lawsuit brought by the Secretary of Labor to invalidate an election of union officers. *See Trbovich v. United Mine Workers*, 400 U.S. 528, 537-39 (1972). Construing Federal Rule of Civil Procedure 24(a)–which permits intervention by persons with an interest in a proceeding that is not adequately represented by existing parties–the Court allowed the individual to intervene based on "the interest of all union members in democratic elections." *Id*. at 538. Employee-Intervenors have a similar and direct interest in this certification election that will not be protected by either of the current parties due to their Neutrality Agreement and their agreement to "align" and coordinate their positions in favor of unionization.

B. The Motion to Intervene Should Be Granted Because Employee Rights Are the Paramount Interest in This Election.

Employees' right to choose or reject union representation is the paramount interest protected by Sections 7 and 9 of the NLRA, 29 U.S.C. §§ 157 and 159. *See, e.g.*, *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985) (NLRA's policy is "voluntary unionism"); *Rollins Transp. Sys.*, 296 N.L.R.B. 793, 794 (1989) (overriding interest under Act is "employees Section 7 rights to decide whether and by whom to be represented"). Accordingly, the Employee-Intervenors have a fundamental statutory interest in the

outcome of this election, as it will determine whether they are exclusively represented by the UAW under Section 9(a). Indeed, this election, like all Board-conducted elections, was conducted precisely to "determine the uninhibited desires of the employees." *General Shoe Corp.*, 77 N.L.R.B. 124, 127 (1948).

By contrast, any interests the UAW or Volkswagen possess are secondary to those of the Employee-Intervenors and their fellow employees who voted against unionization. *See Levitz Furniture Co.*, 333 N.L.R.B. 717, 728 (2001) (employer's only statutory interest in representational matters is to not violate employee rights); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) ("By its plain terms . . . the NLRA confers rights only on employees, not on unions or their nonemployee organizers."). Given that the Employee-Intervenors not only have a statutory interest in this case, but one that exceeds the interests of the UAW and Volkswagen, they must be permitted to intervene to protect their rights and to defend the sanctity of the election they just won. "It is well to bear in mind, after all, that it is employees' Section 7 rights to choose their bargaining representatives that is at issue here." *Levitz Furniture*, 333 NLRB at 728.

C. The Motion to Intervene Must Be Granted Because the Employee-Intervenors' Interests Are Not Represented by Existing Parties.

The Motion to Intervene must be granted because, if it is not, the UAW and Volkswagen will be the only parties to this proceeding. This result is intolerable given that Volkswagen has been colluding with the UAW and will not protect the interests of employees who oppose UAW representation. In particular, Volkswagen will not

vigorously oppose the UAW's objections since it has already declared, via its conduct and the Neutrality Agreement (Ex. 1), that it desires UAW representation of its employees, and will align and coordinate with the UAW to make that happen. In this circumstance, employees must be permitted to intervene to protect their unrepresented interests.

Given that no party to this proceeding represents the interests of the Employee-Intervenors and other employees who voted in the February 12-14 election, the Board must permit the proposed intervention for this proceeding to be just. The Employee-Intervenors' participation is necessary to allow the Region and Board to fairly pass upon the UAW's objections, and not rubberstamp the wishes of two colluding parties. As noted, the Employee-Intervenors will: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by government officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

Indeed, if the Employee-Intervenors are not allowed into this case, this "RM" election process could go on forever. The UAW and Volkswagen could collude to schedule re-run elections over and over again, *ad infinitum*, until UAW representation is achieved.

It would be a mockery of justice for the Board to allow only two colluding parties

–the UAW and Volkswagen–to be parties to this objections proceeding. It would be akin to allowing two foxes to guard the henhouse. Entrusting employee representational rights to employers and unions in this circumstance not only would be illogical, but would run contrary to a core purpose of the Act–to protect employee Section 7 rights *from* employers and unions. *See* 29 U.S.C. §§ 158(a) & (b). As the Supreme Court warned decades ago, it is improper to defer to even "good faith" employer and union beliefs regarding employee representational preferences because doing so "place[s] in permissibly careless employer and union hands the power to completely frustrate employee realization of the premise of the Act–that its prohibitions will go far to assure freedom of choice and majority rule in employee selection of representatives." *Ladies Garment Workers (Bernhard-Altmann Texas Corp.) v. NLRB*, 366 U.S. 731, 738-39 (1961). Here, given that neither the UAW nor Volkswagen will represent the interests of employees opposed to unionization, or even employees who may have voted for the UAW but now want to see the February 12-14 election results certified, the Employee-Intervenors must be allowed to intervene and fully participate as parties.

D. Due Process Requires the Granting of This Motion to Intervene.

Finally, the Due Process clause of the Fifth Amendment to the United States Constitution requires that the Employee-Intervenors be permitted to intervene in these proceedings. Under the Fifth Amendment, the federal government must provide citizens with a hearing before depriving them of their liberty or property. *See, e.g., Zinermon v.*

Burch, 494 U.S. 113, 127-32 (1990). The Employee-Intervenors will be deprived of their liberty, namely their freedom not to associate and to negotiate their own terms and conditions of employment, if the NLRB voids the results of the February 12-14 election that freed them from the specter of exclusive representation by the UAW. *Cf. Mulhall v. UNITE HERE Local 355*, 618 F.3d 1279, 1287-86 (11th Cir. 2010) (employee had "cognizable associational interest to challenge the alleged collusive arrangement between the employer and the union" that would "substantially increase the likelihood that [he] will be unionized against his will"). If the Region or the Board refuse to allow the Employee-Intervenors to intervene, it will have failed to provide them with due process of law prior to that deprivation of fundamental freedoms.

CONCLUSION

In an election, it is the Board's duty to "provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." *General Shoe*, 77 N.L.R.B. at 127. "It is [the Board's] duty to establish those conditions; it is also [the Board's] duty to determine whether they have been fulfilled." *Id.* Among other things, "[i]n the interests of conducting free and fair elections, it is . . . incumbent on the Board to ensure that employees are protected from conduct by supervisors, be it prounion or antiunion, which interferes with employee freedom of choice." *Harborside Healthcare, Inc.*, 343 N.L.R.B. 906, 907 (2004). Here, fulfilling this duty requires that the Board consider the Employee-

Intervenors' opposition to the UAW's objections to the February 12-14 election.

Accordingly, their Motion to Intervene should be granted.

Respectfully submitted,

/s/ Glenn M. Taubman

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the Motion to Intervene and all attachments and Declarations were served via FEDEX overnight delivery to:

Michael Nicholson, Esq.
International UAW
800 East Jefferson Ave.
Detroit, MI 48214

James D. Fagan, Jr., Esq.
Stanford Fagan, LLC
191 Peachtree St., NE, Suite 4200
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and by e-mail and First Class mail to:

Steven M. Swirsky, Esq.
Epstein, Becker & Green
250 Park Ave.
New York, NY 10177
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this 25th day of February, 2014.

/s/ Glenn M. Taubman
_____
Glenn M. Taubman

Exhibit 1

AGREEMENT FOR A REPRESENTATION ELECTION

This Agreement for a Representation Election ("Election Agreement") is made as of this 27th day of January 2014, by and between International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW" or the "Union") and Volkswagen Group of America, Inc. on behalf of itself and its wholly-owned subsidiary Volkswagen Group of America Chattanooga Operations, LLC, referred to in this Election Agreement as "VWGOA," in connection with the UAW's request that VWGOA recognize it as the exclusive bargaining representative of a unit of Production and Maintenance employees employed by VWGOA (the "Hourly Unit") at VWGOA's facility located at 8001 Volkswagen Drive, Chattanooga, Tennessee 37416 (the "Chattanooga Plant") and the parties' agreement that a Question Concerning Representation ("QCR"), as that term is used in the administration of the National Labor Relations Act (the "Act") therefore exists, that said QCR shall be resolved, absent mutual agreement otherwise, through an expedited representation election conducted by the National Labor Relations Board (the "NLRB") in accordance with the terms of this Election Agreement, and as to certain shared principles that the UAW and VWGOA agree shall form the basis for their conduct, activities and relationship between the date of this Election Agreement and such NLRB-conducted representation election, and their future relationship and understandings in the event that either the UAW is certified by the NLRB as the bargaining representative of the Hourly Unit or the UAW does not receive a majority of the valid ballots cast.

WHEREAS, Volkswagen Group of America, Inc. a wholly owned subsidiary of Volkswagen AG, a German corporation, is engaged in the manufacture, import, sale and distribution of high quality automobiles; and

WHEREAS, VWGOA recognizes, supports and has adopted the principles, as affirmed in VWAG's Global Labour Charter on Labour Relations (the "Global Labour Charter") and Declaration on Social Rights and Industrial Relationships at Volkswagen Group (the "Declaration on Social Rights"), of employee participation and co-determination through the establishment and operation of a vibrant employee works councils and the

participation of such works councils in the Volkswagen Group Global Works Council, in a manner consistent with all relevant U.S. labor and employment laws; and

WHEREAS, VWGOA has adopted and supports the principle, as recognized in the Global Labour Charter, that maintaining sustainable corporate governance and Human Resources policies founded on a performance-based and participatory culture will help VWGOA, as it has other companies within the Volkswagen Group in other countries, contribute to securing and promoting competitiveness and economic efficiency while also helping to secure and develop jobs and workforce employability and that these principles are the basis for an appropriate means of addressing the challenges of market competition and of accommodating defined standards of labor relations within VWGOA, as they do elsewhere with the Volkswagen Group; and

WHEREAS, in the context of the Volkswagen Group's performance-based participatory culture, "Performance" stands for the active, competent and committed contribution by the workforce, employee representatives and management toward the collective success of the enterprise, "Participatory" means that the workforce is actively incorporated into the development of the organization, with employees making their contributions to the continual improvement of processes and working conditions and having a stake in the success of the enterprise, and "Participation" is characterized by co-operative, respectful interrelations among the parties concerned and by the understanding that all parties share responsibility for the enterprise and the workforce and therefore that the active definition and exercising of participation rights creates an innovative factor for successful development of the organization; and

WHEREAS, VWGOA has informed employees at the Chattanooga Plant that it believes the establishment of a works council at the Chattanooga Plant modeled upon those at plants of the Volkswagen Group in Germany and other countries, modified and adapted to comply with United States laws and customs, is in the common interest of VWGOA and its employees; and

WHEREAS, the UAW has been and continues to be engaged in an ongoing organizing campaign among the employees employed by VWGOA in the Chattanooga Plant in the Hourly Unit ("Employees"); and

WHEREAS, throughout the course of its campaign to organize the Hourly Unit the UAW has informed Employees and VWGOA that it is familiar with the works councils that exist at Volkswagen Group companies in Germany and elsewhere, the role they play and the voice they provide to all employees, and that the UAW acknowledges, supports and shares VWGOA's commitment to the development of an innovative model of labor relations at the Chattanooga Plant, including the establishment of a works council, in which a lawfully recognized or certified bargaining representative would delegate functions and responsibilities ordinarily belonging to a union to a plant works council that engages in co-determination with the employer, which model of labor relations is referred to in this Election Agreement as the "Dual Model;" and

WHEREAS, the UAW has informed the Employees that if it is recognized or certified as the bargaining representative of the Hourly Unit, it shall be committed to the establishment through collective bargaining of a model of labor-management relations that includes an active and robust Plant Works Council ("Works Council"), and that if such a Works Council is established at the Chattanooga Plant, the UAW would delegate to the Works Council many of the functions and responsibilities ordinarily performed by unions as bargaining representative in the United States, that it shall support the Dual Model as the basis for a relationship with VWGOA and that it is committed to the delegation to the Works Council of certain duties, responsibilities and functions that are traditionally the subject of collective bargaining, with the understanding that such Dual Model shall be included in any and all collective bargaining agreements that the parties may enter into and that the Dual Model shall continue to be followed and maintained at the Chattanooga Plant for so long as the UAW shall represent the Hourly Unit or any other unit of employees at the Chattanooga Plant; and

WHEREAS, the UAW has informed VWGOA that a majority of the Employees employed by VWGOA at the Chattanooga Plant in the Hourly Unit have signed cards

designating the UAW as their representative for collective bargaining and it has asked that VWGOA recognize it as the representative of that unit; and

WHEREAS, VWGOA and the Union agree that a QCR now exists and that it should be resolved through an NLRB-conducted election, in which Employees in the Hourly Unit vote by secret ballot whether they want the UAW to be their bargaining representative; and

WHEREAS, VWGOA and the UAW agree, subject to the terms and conditions of this Election Agreement, that VWGOA shall file an "RM-Representation Petition (Employer Petition)," ("RM Petition") with the NLRB at the time and in the manner described in Paragraph 3(a) of this Election Agreement and they shall jointly request that the NLRB conduct a secret ballot representation election in the Hourly Unit on an expedited basis and they shall enter into a Stipulation for Certification Upon Consent Election ("Stipulation for Certification" or "Stipulation") with the NLRB, pursuant to which the NLRB shall conduct a secret ballot election consistent with the relevant terms agreed to in this Election Agreement and the parties shall cooperate to ensure that the Employees shall be able to freely exercise their right to vote in an informed and free manner, and the parties shall structure their future relationship and dealings following the NLRB's certification of the results of such election, whatever its outcome.

NOW, THEREFORE, in consideration for the mutual promises and commitments set forth in this Election Agreement, including but not limited to the parties' agreement, in the event the UAW is certified as the representative of the Hourly Unit, to support the establishment and perpetuation of the Dual Model and a strong and vibrant Works Council, the parties' mutual representations and warrantees and the other terms and conditions contained herein, which each party acknowledges and agrees are material conditions which each relied upon in entering into this Election Agreement, without which they would not have done so and without which they would not have waived their rights in connection with the campaign, the UAW and VWGOA intending to be legally bound, agree as follows:

1. INCORPORATION OF RECITALS

Each of the preceding recitals is incorporated in and is a part of this Election Agreement as if set forth at length herein.

2. PARTIES

This Election Agreement is made and entered into by and between the UAW and VWGOA. The term "UAW" shall be deemed to include the International Union, United Automobile, Aerospace and Agricultural Implement Workers as well as its locals, regions, districts and other sub-units, and any officer, employee, agent or member acting on its behalf. Legal party to this Election Agreement is Volkswagen Group of America, Inc. on behalf of itself and its wholly-owned subsidiary Volkswagen Group of America Chattanooga Operations, LLC. It is understood and agreed that neither any parent of either party nor any other member of the Volkswagen Group is a party to nor bound by this Election Agreement.

3. PETITION FOR AN NLRB ELECTION

(a) The parties agree that within seven (7) days following their execution of this Election Agreement they shall together contact the NLRB and inform the Regional Director for Region 10 that (i) the UAW has requested that VWGOA recognize it as the exclusive bargaining representative of the Hourly Unit, (ii) the parties agree that a QCR exists between them and that said QCR should be resolved through a secret ballot election conducted by the NLRB, (iii) the parties have agreed to terms for a secret ballot election to be conducted by the NLRB at the Chattanooga Plant in the Hourly Unit, which terms they agree shall be incorporated in a Stipulation for Certification which the parties are prepared to sign contemporaneously with the filing of an RM Petition by VWGOA with Region 10 of the NLRB or such other office of the NLRB as the NLRB may direct, (iv) the Stipulation for Certification shall provide for the election, to the extent possible, to be conducted by the NLRB on February 12-14, 2014, or such other dates as are mutually agreed between the parties and the NLRB Regional Director, following the Regional Director's approval of the Stipulation for Certification, and (v) that the parties waive their right to a pre-election hearing with respect to the RM Petition.

(b) The parties shall ask the NLRB to conduct the election on three (3) consecutive weekdays, February 12-14, 2014, and shall propose that the NLRB conduct the election in the locations of its choosing at the Chattanooga Plant, with the polls to be open from 5 a.m. to 8 p.m. each day, or such other times as are mutually agreed between the parties and the NLRB Regional

Director, to allow the maximum opportunity for eligible Employees to vote if they wish to exercise their right to vote in the election.

(c) VWGOA agrees that it shall provide the UAW with a list of the names and home addresses of Employees in the Hourly Unit (the "Excelsior List") within twenty-four (24) hours of their signing the Stipulation. In return for VWGOA complying with the foregoing and if the UAW nonetheless receives the Excelsior List fewer than seven (7) calendar days before the date of the election (due to the expedited dates set for the election) then the UAW represents that by entering into this Election Agreement that it clearly and unequivocally waives the balance of the period that it would otherwise be entitled to have the Excelsior List in its possession prior to the election. The UAW agrees that it will not make visits to the homes of Employees unless an Employee has explicitly requested that the UAW make a visit to the Employee's home.

(d) The initial announcement of the reaching of this Election Agreement, the filing of the RM Petition and the terms of the Stipulation for Certification, including the date(s), time(s) and location(s) of the voting if it has been approved by the Regional Director, shall be made by each party at such time(s) as the parties jointly agree. The parties shall also agree on the content of such initial announcement(s) and any accompanying press release(s) to be individually released. The parties agree that they shall coordinate their announcements and statements concerning the subject matter of this Election Agreement, including but not limited to their respective initial announcements to Employees.

(e) Following the signing of the Election Agreement and the NLRB's approval of the Stipulation for Certification the parties will mutually agree on the form of communication for informing the Employees of the parties' Election Agreement and its terms, which will include placement of copies of the Election Agreement on plant bulletin boards.

(f) The parties agree that during the period following their initial announcements they shall advise one another of their planned communication activities and shall seek, as appropriate, to align messages and communications through the time of the election and the certification of the results by the NLRB.

4. **BARGAINING UNIT**

(a) This Election Agreement shall cover the Employees in the Hourly Unit at the Chattanooga Plant, which is composed of all employees employed by Employer in the classifications listed in Exhibit A, or in classifications called by different names when performing similar duties at the Chattanooga Plant. This unit shall be the unit named in the Petition and the Stipulation.

(b) Eligibility to vote shall be in accordance with the standards and practices of the NLRB, and those Employees employed in the Hourly Unit as of the end of the payroll period immediately preceding the approval by the NLRB of the Stipulation for Certification who are employed by VWGOA in positions in the Hourly Unit at the time of the election shall be eligible to vote in the election.

(c) The parties further agree that persons employed by contractors, employee leasing companies, temporary agencies, and other persons supplying labor to VWGOA in connection with operations of any type at the Chattanooga Plant are excluded from and shall not be included in any bargaining unit with respect to which the election may occur under this Election Agreement.

5. **PRE-ELECTION CAMPAIGN PERIOD**

The parties agree that it is their mutual priority that there shall not be any interruption or disruption to production or quality at the Chattanooga Plant or any other interference with the business and operations of VWGOA between the date of this Election Agreement and the election that it contemplates. For the purpose of ensuring an orderly environment for the exercise by the Employees of their rights under Section 7 of the Act and to avoid picketing and/or other economic action directed at VWGOA during the UAW's organizing campaign among the Employees employed in the Hourly Unit, the parties agree as follows:

(a) The parties mutually recognize that national labor law guarantees employees the right to form or select any labor organization to act as their exclusive representative for the purpose of collective bargaining with their employer, as well as the right to refrain from such activity.

(b) The parties and their representatives will communicate with Employees in a non-adversarial, positive manner and will not defame or make any untruthful statements regarding one another or their respective employees and representatives, including locals and affiliates of the UAW and other members of the Volkswagen Group. Neither party nor any of its representatives will interfere with the right of Employees to vote in the election contemplated in this Election Agreement and each party shall respect the right of Employees to decide whether to be represented for purposes of collective bargaining by the UAW. VWGOA shall not take a position opposed to such representation. The parties' communications with Employees shall be consistent with the foregoing.

(c) Beginning with the filing of the Petition and continuing up until 11.59 p.m. the day before the voting begins, VWGOA shall provide UAW access to its premises and the Employees, including access to and use of the room designated "RB2, 009, HR Planning" in the Chattanooga Plant, where the UAW's representatives may meet with interested Employees who elect to discuss the election and the Union with it. Such access shall be limited to persons employed by the UAW. VWGOA shall provide the UAW with access to suitable locations where the UAW may post notices and announcements to Employees and provide the UAW with tables in mutually agreed non-work areas where UAW representatives may make literature available for Employees who wish to receive such materials and speak to Employees who approach them with questions. The UAW agrees that it shall not approach or seek to speak with Employees who do not approach it. The UAW agrees that it shall provide VWGOA with reasonable advance notice, including the name, position and affiliation of its representatives who it proposes to bring into the Chattanooga Plant and VWGOA agrees that it will not unreasonably deny admittance to such persons. Provided, however, in the event of any delay to the election or any of the other events contemplated by this Election Agreement due to any external considerations, the parties shall meet and confer to discuss whether and how such events may affect the terms of this Paragraph 5(c). The UAW acknowledges and agrees that all UAW representatives granted entry to the Chattanooga Plant under this Paragraph 5(c) shall be required to comply with VWGOA's normal requirements and restrictions upon access and admission to the Chattanooga Plant and that persons admitted to the Chattanooga Plant under this Election Agreement shall not be permitted to enter production, manufacturing or other work areas in the Chattanooga Plant.

(d) VWGOA shall schedule and conduct shift meetings for all Hourly Unit Employees on two consecutive dates, during their working time, beginning within two (2) working days of the NLRB's approval of the Stipulation for Certification, unless otherwise agreed to by the parties. At these meetings VWGOA shall communicate to the Employees the organizational framework for the election, the fact that it respects the right of the Employees to decide on union representation, its support for the values described in the recitals above and its views concerning the establishment of a Works Council. Following such introductory remarks by VWGOA, the UAW shall be given the opportunity to speak to the Employees present at the meeting. While the Employees' attendance at the first portion of the meeting during which VWGOA will present to the Employees shall be mandatory, attendance at the second part of the meeting during which the UAW will present to the Employees present shall be voluntary. VWGOA supports the attendance of Employees at the second portion of the meeting during which the UAW shall have the opportunity to address Employees in attendance in order that all Employees have the opportunity to hear the UAW and so that they may make well informed decisions concerning voting in the Election, and so that they may gain a clear understanding what they would be voting on, while agreeing that Employees' attendance and participation shall be voluntary. The parties acknowledge and agree that each such meeting shall last a total of approximately one (1) hour or less. The parties agree that these meetings shall be conducted in a manner so that there is no adverse effect on the business or operations of the Chattanooga Plant.

(e) VWGOA's communications during the period between the date of this Election Agreement and the election contemplated by it shall be consistent with the recitals described above and the right of the Employees to decide by secret ballot election whether they want to be represented by the Union.

(f) VWGOA shall provide appropriate training and counseling for its supervisors and managers at the Chattanooga Plant within two (2) days of the NLRB's approval of the Stipulation with respect to the election and VWGOA's position concerning the election, the Dual Model and VWGOA's positions concerning neutrality and the right of the Employees to decide whether they wish to be represented by the Union.

(g) The parties agree that in order to fulfill their mutual obligations and commitments to ensure a fair election conducted in accordance with the principles set forth in the recitals and the terms of this Election Agreement, each party shall each designate an appropriate representative who shall have responsibility for ensuring compliance with the party's obligations under this Paragraph 5. The parties' designees shall meet and confer as necessary to discuss and address reports of actions inconsistent with the parties' obligations. Each party's designee shall have the authority to promptly investigate and where appropriate and necessary to take appropriate action to address any actions or statements by the parties that are inconsistent with these principles and/or the terms of this Election Agreement and to effect the resolution of such matters. The parties further agree that they shall designate a mutually acceptable neutral person to serve as a mediator or facilitator to be available to assist their designated representatives, if necessary, in resolving such matters as may arise under this Paragraph 5(g) to the extent that they agree is necessary.

(h) VWGOA and the UAW agree that the UAW Principles for Fair Union Elections set forth appropriate practices in connection with a representation election, which reflect the parties' support for allowing employees to decide by secret ballot election whether they wish to be represented. It is agreed that nothing contained in those Principles shall override any provision of this Election Agreement and that in the event of any inconsistency between them, this Election Agreement shall control.

6. POST-ELECTION OBLIGATIONS

(a) The parties agree that following the NLRB election, if the UAW is certified as the representative of the Hourly Unit, they shall promptly confirm their commitment and agreement to the Dual Model and the fact that the Dual Model shall be an integral and fundamental part of their collective bargaining relationship unless and until such time as both parties may agree to modify or discontinue the Dual Model and that the UAW shall, through collective bargaining for an initial collective bargaining agreement, which shall establish the timing and details for the establishment and functioning of the Dual Model, delegate to a Works Council to be established by VWGOA at the Chattanooga Plant certain issues, functions and responsibilities that would otherwise be subject to collective bargaining, consistent with the concepts and principles set forth in Exhibit B to this Election Agreement. It is the express understanding and agreement of

the parties that and any and all future collective bargaining agreements that may be entered into by them shall confirm and maintain their commitment to the Dual Model including the Works Council's role. The parties agree that and the UAW represents and warrants that the UAW's delegation to the Works Council shall be specified and confirmed in the parties' initial collective bargaining agreement and in any and all subsequent renewals, extensions and future agreements, that the Dual Model shall be established, continued and maintained as the status quo and that any future changes to the UAW's delegation to the Works Council and/or to the Dual Model would require the express written agreement of both VWGOA and the UAW and that absent such agreement, the UAW's delegation to the Works Council and their agreement as to the Dual Model shall continue in effect.

(b) If the UAW is certified as the bargaining representative of the Hourly Unit by the NLRB, the parties shall commence negotiations for a collective bargaining agreement, including the establishment of a Works Council, not later than thirty (30) days from the date that the parties receive the Certification of Representative from the NLRB. The parties recognize and agree that any such negotiations for an initial collective bargaining agreement and any future agreements shall be guided by the following considerations: (a) maintaining the highest standards of quality and productivity, (b) maintaining and where possible enhancing the cost advantages and other competitive advantages that VWGOA enjoys relative to its competitors in the United States and North America, including but not limited to legacy automobile manufacturers, and (c) ensuring that the Dual System is successfully implemented and maintained at the Chattanooga Plant, including the parties' continuing obligations as described in the Recitals to this Election Agreement and Paragraphs 6(a) and Paragraph 6(b). The parties agree that as a part of their negotiations for an initial collective bargaining agreement they shall negotiate for the prompt establishment of a Works Council and for its commencement as described in this Election Agreement and shall take all steps necessary to enable the Works Council to be constituted as quickly as possible.

(c) Unless otherwise agreed to by the parties, if the UAW does not receive a majority of the valid ballots cast in the election and the NLRB's final certification of the results of the election does not certify the UAW as the bargaining representative of the Hourly Unit, the UAW (i) shall discontinue all organizing activities at the Chattanooga Plant and all other VWGOA

facilities and locations for a period of not less than one (1) year beginning with the date of the election, (ii) that it shall not make another request for recognition or file a representation petition with the NLRB to seek a representation election in the Hourly Unit or any other unit at the Chattanooga Plant for a period of not less than one (1) year from that date, and (iii) that it shall not engage in or resume any organizing or other activity in connection with the Chattanooga Plant or any other facility or operation of VWGOA for a period of not less than one (1) year from the date of the election. Provided, in the event that another union commences a serious, concerted and legitimate effort to organize the Employees during the period covered by Paragraph 6(c) (iii), the UAW shall, upon notice to VWGOA, be released of its obligations under Paragraph 6(c).

7. NO STRIKE – NO LOCKOUT

While this Election Agreement remains in effect, and if the UAW is certified as the representative of the Hourly Unit, while the parties negotiate for an initial collective bargaining agreement, (a) the UAW will not engage in picketing, strikes, boycotts, or work slowdowns, and (b) VWGOA will not engage in a lockout of Employees. The parties agree that in the event that the UAW is certified as the representative of the Hourly Unit the parties would, if they are unable to reach agreement for an initial collective bargaining agreement in an appropriate period of time, agree to select a mediator or other third party acceptable to both, to assist them in their efforts to timely complete negotiations for a Collective Bargaining Agreement, which may include interest arbitration.

8. TERM

This Election Agreement shall be in full force and effect for a period of one (1) year from the signing of this Election Agreement, or until such earlier date as the parties execute a collective bargaining agreement, which shall supersede this Election Agreement. Provided, the parties further agree that in the event the NLRB conducts a representation election and the NLRB's final certification of the results of the election does not certify the UAW as the representative of the Hourly Unit, VWGOA shall not have any further obligations under this Election Agreement. Provided further, however that in the event of any termination of this Election Agreement following an NLRB election in which the UAW is certified as the

representative of the Hourly Unit, the UAW and VWGOA shall continue to be bound by all obligations under Paragraphs 6 and 7 as well as those contained in the Recitals to this Election Agreement.

9. NO DISPARAGEMENT

The UAW agrees that it will not make any (written or verbal) negative comments about VWGOA, its parents and affiliates, or any other member of the Volkswagen Group or their management or their products. VWGOA agrees that it will not make any negative comments (written or verbal) against the UAW.

10. NO THIRD PARTY BENEFICIARIES

(a) The parties agree that it is their understanding and agreement that there are not intended to be and shall not be any third party beneficiaries to this Election Agreement and that neither Employees nor any other person, party or entity of any type is vested with any right under this Election Agreement. Therefore no party other than the UAW and VWGOA shall have any right to bring any action to enforce any provision of this Election Agreement.

11. NOTICE

Any notice given or required under this Election Agreement shall be in writing and may be sent by overnight delivery service or by email with an immediate overnight copy to follow.

Notice to the Union shall be sent to:

Gary Casteel
Director
UAW, Region 8

With a copy to:

Michael Nicholson, Esq.
General Counsel
International Union, UAW

Notice to VWGOA shall be sent to:

Sebastian Patta
Vice President, Human Resources
Volkswagen Group of America
Chattanooga Operations, LLC

With a copy to:

Steven M. Swirsky, Esq.
Epstein Becker & Green, P.C.

With a copy to:

David Geanacopoulos, Esq.
Executive Vice President, General Counsel
Volkswagen Group of America

12. COMPLETE AGREEMENT

This Election Agreement is the complete agreement of the parties concerning the subject matters hereof. It may not be altered or amended except in a signed writing signed by authorized representatives of the parties.

VOLKSWAGEN GROUP OF AMERICA INC.
signed on January 20, 2014

Michael Horn
President & CEO

Frank Fischer
Chairman & CEO,
Chattanooga Operations LLC

Sebastian Patta
Vice President, Human Resources,
Chattanooga Operations LLC

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Bob King
President

Dennis Williams
Secretary-Treasurer

Gary Casteel
Director, Region 8

EXHIBIT A

The parties agree that the Hourly Unit shall be described as follows in all filings and agreements, including the RM Petition and the Stipulation for Certification:

All regular full-time and regular part-time production and maintenance employees employed by Volkswagen Group of America at its facility located at 8001 Volkswagen Drive, Chattanooga, TN 37421 (the "Chattanooga Plant"), including Team Members, Skilled Team Members and Team Leaders but excluding all Specialists, Technicians, temporary and causal employees, plant clericals, office clericals, professional employees and managerial employees, engineers, purchasing and inventory employees, all secretarial, office clerical, and all managers, supervisors, and guards as defined in the National Labor Relations Act. Any and all persons employed by contractors, employee leasing companies, temporary agencies, and other persons supplying labor to in connection with operations of any type at the Chattanooga Plant are excluded from the bargaining unit.

EXHIBIT B

DUAL MODEL INCLUDING WORKS COUNCIL

1.1 General Description of the Dual Model

The Dual Model is based on the Volkswagen Culture of cooperative labor relations, which is practiced by companies in the Volkswagen Group all over the world. The Dual Model is intended to adopt the practices of the Volkswagen Group culture to the fullest extent possible, in a manner consistent with all applicable US labor and employment laws.

Under the Dual Model employees are represented by a union for collective bargaining with their employer. They also participate in and receive representation by a Works Council that plays an important role in the day to day operation of the plant. In the Dual Model, the respective roles and responsibilities of the union and the Works Council would be established through collective bargaining between the Company and a Union. They would be defined in an agreement, reached in bargaining between the Employer and the Union and put in writing in a collective bargaining agreement and/or other legally binding written agreements (collectively referred to as a "CBA").

The Dual Model is conceived as a model of labor relations that would allow for development and establishment of a robust Works Council through collective bargaining between the Company and a legally recognized/certified labor union that represents a unit of employees. Under this model, the Union and the Works Council would each have defined roles and responsibilities, which would be established and defined through collective bargaining.

As part of their contract negotiations, the bargaining parties will also negotiate to include in their initial **collective bargaining agreement** the establishment of a Works Council including its organizational framework, and the responsibilities and authorities which will be delegated to the Works Council, as more thoroughly explained below. The parties will also establish the process and timing for the Works Council assuming the delegated functions and for the employer's retention, through a retained rights and/or management rights clause in the **CBA**, of responsibility for such matters until they are assumed by the Works Council.

The Employer and the Union in its capacity as the lawful bargaining representative of the Hourly Unit would agree to the delegation of designated topics and responsibilities to the Works Council. They would also define the organizational structure for participation through collective bargaining. These assigned and delegated responsibilities would thereafter be retained by the Works Council unless and until both the Employer and the Union agree to change that.

A Works Council is intended to offer a voice for all plant employees (except employees employed in supervisory and/or managerial capacities as those terms are defined under the National Labor Relations Act). All employees (other than supervisors and manages) (including both hourly and salary employees) would have the right to participate in Works Council elections regardless of whether they are represented by or belong to a union. All employees (other than

supervisory and managerial employees) would also be eligible to run for membership and serve as members of the Works Council.

2. THE WORKS COUNCIL

2.1 The Role of the Works Council

The Works Council would operate on the basis of authority delegated to it by the Union and Employer and in compliance with U.S. labor and employment laws to carry out assigned roles in accordance with direction and procedures, as well as in the spirit of the Volkswagen Group culture as reflected in its Social Charter and Charter on Labour Relations. The functioning of the Works Council would also be guided by and consistent with the terms of the CBA relative to represented employees. It would be expected to carry out its responsibilities in accordance with the best interests of the employees and the employer and with respect for the principles outlined and with respect for the roles of the Union and the Employer as bargaining partners.

The roles of the Works Council would include:

- making decisions by majority vote of its elected members for the good of the employees as well as the Employer on all issues for which the Works Council would have responsibility;
- representing the interests of employees in the day to day running of the plant. The Works Council members would deal with complaints and suggestions and cases where there is a need of individual support or advice;
- serving as the contact for management for all intra-company issues concerning the topics and tasks assigned to the Works Council under the CBA and the documents establishing the Works Council and its operative documents;
- communicating to the employees concerning the Works Council's activities and conveying information given by the Employer to it;
- initiating, discussing and/or negotiating ideas and other intra-company needs with management;
- acting in a respectful and non-discriminatory manner, in the interests of all employees without regard to gender, race, age, religion, sexual orientation or other legally protected characteristics and without regard to union membership or job classification;
- conducting its activities in a manner that ensures compliance with regulations and the adherence to the applicable laws; and
- carrying out operational management and guideline setting with respect to designated matters, in accordance with the direction of the parties.

2.2 Definition of Participation Rights

A CBA would provide for delegation of specific responsibilities to the Works Council. These responsibilities would be described in detail in the CBA and/or other agreements between the bargaining partners. The bargaining parties would also describe in their agreement the respective level of authority, role and rights of the Works Council as to with each such responsibility.

Each delegated topic would be assigned to the Works Council with a particular "participation right," either Information, Consultation or Co-Determination. In the Charter on Labor Relations, these are defined as follows:

a. The right to **Information** means that on-site employee representatives must be given comprehensive information in due time in order to have opportunity to assimilate the facts of a given circumstance and form an opinion. "In due time" means that information concerning measures must be provided at the time of commencement of any planning process. "Comprehensive" means that all relevant aspects and data must be relayed in comprehensible form. Information must previously have been provided before any measure can be implemented.

b. The right to **Consultation** refers to the necessity for active dialogue between on-site employee representatives and management. The aim of consultation is to give employee representatives opportunity for initiative or protest concerning a given issue or circumstance and, where necessary, for discussion about how to prevent detrimental effects. Consultation would be compulsory prior to the implementation of any measure.

c. The right to **Co-Determination** means the right of on-site employee representatives to consent, control and take initiative in connection with any shared active decision-making process or responsibility. Prior consent must be solicited before any measure can be implemented.

2.3 The Gradual Approach

Since the Works Council would be new for all parties involved, a step by step approach would be followed. At the start, all Works Council members would need to learn to deal with new topics and responsibilities. Similarly, management would have to learn to work with the newly established Works Council. The step by step approach would give the Works Council the opportunity to gain experience and to become engaged with more topics and more rights over what would be an agreed upon period of time, which would be established through negotiations. Through the gradual approach, the parties would seek to avoid overloading and overwhelming the new body with too many tasks and setting expectations too high. Phased assumption of topics and responsibilities would provide it a chance to establish itself.

Initially, the Works Council would be expected to focus on:

a. topics where a high need for involvement is readily apparent; these include work organization, especially agreements on shift calendars and scheduling of overtime;

b. "social issues," such as health and safety; and

c. participation in the implementation of a grievance procedure. It is envisioned that the grievance procedure would include the Works Council as a first level, where it could pursue informal resolution of problems at the plant level. This would be in furtherance of the shared objectives of avoiding the filing and processing of formal grievances and the prompt, non-adversarial resolution of concerns and issues on the shop floor.

Step by step, the other agreed upon responsibilities and functions would gradually be added to the day to day work of the Works Council. Nevertheless the basic division of responsibilities between the Union and the Works Council, which would be agreed to in bargaining and confirmed in the CBA, would not be affected or reduced by this gradual approach and it would be agreed that matters to be delegated would remain the responsibility of the Employer until they were assumed by the Works Council.

The same gradual approach would apply to the respective Participation rights. At the beginning the Works Council would be granted the rights of Information and Consultation and with the experience gained after an agreed upon time period, it would ultimately assume the right for Co-Determination, as defined in the Volkswagen Charter on Labour Relations and adapted to the US legal setting.

The goal would be to achieve a consensus on the agreements between Works Council and the Employer.

In order to ensure that the Works Council would be able to successfully assume all of its responsibilities, VWGoA would commit to providing the necessary training and resources for the Works Council members and for their Employer counterparts. To the extent applicable, VWGoA and the UAW would explore with the Federal Mediation and Conciliation Service what assistance, training, support and other resources are available under the Labor Management Cooperation Act of 1978 for cooperative programs.

Each of the topics, the timeframe and the level of the rights as to each would be described clearly in an agreement – including the description of the framework regulations that will have to be implemented by the Works Council.

3. FUNCTIONING OF THE WORKS COUNCIL

The CBA would include processes for the formation and sustainability of the Works Council.

3.1 The Election and Eligibility

All hourly and salary employees of Volkswagen Chattanooga (except employees with a leadership/management function such as supervisors, assistant managers, managers, general managers and board) would be eligible to serve on, vote for and would be represented by a Works Council.

3.2 Structure of the Works Council

The initial structure of the Works Council would be described in the CBA.

Members of the Works Council would be elected in secret ballot elections. The election procedures would be structured to ensure that members would be chosen from the various areas of the plant and employees from all areas have a voice on the Works Council.

After the Works Council is elected, it would "constitute" itself by electing a chairperson and vice-chairperson from among its members and defining the Works Council's guidelines.

MEMORANDUM

To: All Team Members

From: Sebastian Patta
Vice President, Human Resources

Date: February 4, 2014

Re: Voting Hours February 12, 13 and 14, 2014

We want to make sure that all Team Members are aware of the actual times are aware of the actual times for voting in the representation election. The times are as follows:

Date	Time	Location
February 12, 2014	6:00-9:30 a.m.	Conference Center
	11:00-11:45 a.m.	RB1 Conference Room
	3:00-8:30 p.m.	Conference Center
	11:00-11:45 p.m.	RB1 Conference Room
February 13, 2014	6:00-9:30 a.m.	Conference Center
	11:00-11:45 a.m.	RB1 Conference Room
	3:00-8:30 p.m.	Conference Center
	11:00-11:45 p.m.	RB1 Conference Room
February 14, 2014	6:00-8:30 p.m.	Conference Center

These Times, which are different than those described in paragraph 3(b) on page 5 of the Election Agreement between the Company and the UAW were determined by the National Labor Relations Board to be appropriate times to make sure that all eligible Team Members have the opportunity to vote of they wish to do so.

MEMORANDUM

To: All Team Members

From: Sebastian Patta
Vice President, Human Resources

Date: February 4, 2014

Re: Bargaining Unit Description – Which Team Members Will Be Eligible to Vote

There are minor wording differences in the description of which Team Members will and will not be eligible to vote in the Representation Election that the NLRB will conduct on February 12, 13 and 14, 2014 at the Plant. The actual description of the Unit that is in the Stipulated Election Agreement and will be in the NLRB Notices is as follows:

> All full-time and regular part-time production and maintenance employees employed by Volkswagen Group of America, Inc., and/or its wholly-owned subsidiary Chattanooga Operations LLC, at its facility located at 8001 Volkswagen Drive, Chattanooga, TN 37421 (the "Chattanooga Plant"), including Team Members, Skilled Team Members and Team Leaders but excluding all Specialists, Technicians, plant clerical employees, office clerical employees, engineers, purchasing and inventory employees, all temporary and casual employees, all employees employed by contractors, employee leasing companies, and/or temporary agencies, all professional employees, and all guards, managers and supervisors as defined in the Act.

While this wording is slightly different than that in Exhibit A of the Election Agreement between Volkswagen Group of America and the UAW, the meaning is the same. The wording has been changed to comply with the NLRB's practices and requirements.

Declarations of Employee-Intervenors

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),

and

MICHAEL BURTON, *et alia*,
(Employee-Intervenors).

Case No. 10-RM-121704

DECLARATION OF MICHAEL BURTON

Michael Burton, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares as follows:

1) I have personal knowledge of all of the facts detailed herein.

2) I am currently employed in the paint shop as a quality basecoat inspector at Volkswagen's Chattanooga auto manufacturing plant. I have worked at Volkswagen since April 2011. Our facility has never had a union, and I oppose unionization by the UAW.

3) When the UAW was initially attempting to become employees' exclusive bargaining representative via a "card check," I was one of eight Volkswagen employees who filed unfair labor practice charges challenging the legality of the UAW's card

collection process, the staleness of its cards, and its demand for "voluntary recognition" based upon a claimed majority of cards. *See* NLRB Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669; and 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221; 10-CB-115280 and 10-CB-115311.

4). I actively campaigned against the UAW in the election held on February 12-14, 2014.

5) I am seeking to intervene in this case so that, through my attorneys, I can: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by governmental officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

6) Given the Neutrality Agreement signed by Volkswagen and the UAW and the alignment of these two parties, I believe that I must be heard regarding the UAW's efforts to overturn our election victory and thereby deny employees our rights under the NLRA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on February 24, 2014.

Michael Burton

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON, *et alia*,
(Employee-Intervenors).

Case No. 10-RM-121704

DECLARATION OF THOMAS HANEY

Thomas Haney, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares as follows:

1) I have personal knowledge of all of the facts detailed herein.

2) I am currently employed as a lab specialist at Volkswagen's Chattanooga auto manufacturing plant. I have worked at Volkswagen since October 2012. Our facility has never had a union, and I oppose unionization by the UAW.

3) When the UAW was initially attempting to become employees' exclusive bargaining representative via a "card check," I was one of eight Volkswagen employees who filed unfair labor practice charges challenging the legality of the UAW's card collection process, the staleness of its cards, and its demand for "voluntary recognition"

based upon a claimed majority of cards. *See* NLRB Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669; and 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221; 10-CB-115280 and 10-CB-115311.

4). I actively campaigned against the UAW in the election held on February 12-14, 2014.

5) I am seeking to intervene in this case so that, through my attorneys, I can: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by governmental officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

6) Given the Neutrality Agreement signed by Volkswagen and the UAW and the alignment of these two parties, I believe that I must be heard regarding the UAW's efforts to overturn our election victory and thereby deny employees our rights under the NLRA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on February 24, 2014.

Thomas Haney

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),

and

MICHAEL BURTON, *et alia,*
(Employee-Intervenors).

Case No. 10-RM-121704

DECLARATION OF MICHAEL JARVIS

Michael Jarvis, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares as follows:

1) I have personal knowledge of all of the facts detailed herein.

2) I am currently employed as the team leader on the closure line at Volkswagen's Chattanooga auto manufacturing plant. I have worked at Volkswagen since March 2011. Our facility has never had a union, and I oppose unionization by the UAW.

3) When the UAW was initially attempting to become employees' exclusive bargaining representative via a "card check," I was one of eight Volkswagen employees who filed unfair labor practice charges challenging the legality of the UAW's card collection process, the staleness of its cards, and its demand for "voluntary recognition"

based upon a claimed majority of cards. *See* NLRB Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669; and 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221; 10-CB-115280 and 10-CB-115311.

4). I actively campaigned against the UAW in the election held on February 12-14, 2014.

5) I am seeking to intervene in this case so that, through my attorneys, I can: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by governmental officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

6) Given the Neutrality Agreement signed by Volkswagen and the UAW and the alignment of these two parties, I believe that I must be heard regarding the UAW's efforts to overturn our election victory and thereby deny employees our rights under the NLRA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on February 24, 2014.

Mike Jarvis

Michael Jarvis

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON, *et alia*,
(Employee-Intervenors).

Case No. 10-RM-121704

DECLARATION OF DANIELE LENARDUZZI

Daniele Lenarduzzi, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares as follows:

1) I have personal knowledge of all of the facts detailed herein.

2) I am currently employed in the maintenance department of Volkswagen's Chattanooga auto manufacturing plant. I have worked at Volkswagen since July 2012. Our facility has never had a union, and I oppose unionization by the UAW.

3) When the UAW was initially attempting to become employees' exclusive bargaining representative via a "card check," I was one of eight Volkswagen employees who filed unfair labor practice charges challenging the legality of the UAW's card collection process, the staleness of its cards, and its demand for "voluntary recognition"

based upon a claimed majority of cards. *See* NLRB Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669; and 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221; 10-CB-115280 and 10-CB-115311.

4). I actively campaigned against the UAW in the election held on February 12-14, 2014.

5) I am seeking to intervene in this case so that, through my attorneys, I can: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by governmental officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

6) Given the Neutrality Agreement signed by Volkswagen and the UAW and the alignment of these two parties, I believe that I must be heard regarding the UAW's efforts to overturn our election victory and thereby deny employees our rights under the NLRA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on February 24, 2014.

Daniele Lenarduzzi

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON, *et alia*,
(Employee-Intervenors).

Case No. 10-RM-121704

DECLARATION OF DAVID REED

David Reed, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares as follows:

1) I have personal knowledge of all of the facts detailed herein.

2) I am currently employed in the finish repair department at Volkswagen's Chattanooga auto manufacturing plant. I have worked at Volkswagen since July 2010. Our facility has never had a union, and I oppose unionization by the UAW.

3) When the UAW was initially attempting to become employees' exclusive bargaining representative via a "card check," I was one of eight Volkswagen employees who filed unfair labor practice charges challenging the legality of the UAW's card collection process, the staleness of its cards, and its demand for "voluntary recognition"

based upon a claimed majority of cards. *See* NLRB Case Nos. 10-CA-114589, 10-CA-114636, 10-CA-114669; and 10-CB-114152, 10-CB-114170, 10-CB-114184, 10-CB-114187, 10-CB-114216, 10-CB-114221; 10-CB-115280 and 10-CB-115311.

4). I actively campaigned against the UAW in the election held on February 12-14, 2014.

5) I am seeking to intervene in this case so that, through my attorneys, I can: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by governmental officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

6) Given the Neutrality Agreement signed by Volkswagen and the UAW and the alignment of these two parties, I believe that I must be heard regarding the UAW's efforts to overturn our election victory and thereby deny employees our rights under the NLRA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on February 24, 2014.

David Reed

Exhibit C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and

Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization,

and

SOUTHERN MOMENTUM, TRAVIS FINNELL, and SEAN MOSS, et al,

Employee Intervenors.

MOTION OF SOUTHERN MOMENTUM, TRAVIS FINNELL, AND SEAN MOSS TO INTERVENE, WITH RESPONSE TO OBJECTIONS TO CONDUCT AFFECTING ELECTION ATTACHED; ALTERNATIVELY, MOTION FOR LEAVE TO FILE ATTACHED AMICUS RESPONSE TO OBJECTIONS

Pursuant to National Labor Relations Board Rules and Regulations §102.65(b), Southern Momentum, Travis Finnell, and Sean Moss ("Intervenors"), which Intervenors do represent employees of Volkswagen Group of America, Inc. ("Volkswagen," "VW," or the "Employer"), hereby move to intervene in this case. As provided below and in the Declarations of employees Finnell and Moss (attached hereto as Exhibit A), Intervenors' interests are directly affected by the outcome of this case. As such, Intervenors invoke the inherent power of the National Labor Relations Board (the "Board" or the "NLRB") to allow all parties to be heard, such that they may protect their legal interests provided under Section 7 of the National Labor Relations Act (the

"Act" or the "NLRA"). The Intervenors' Response to the UAW's Objections to Conduct Affecting Election is filed herewith.

Alternatively, if the Board for some reason denies this Motion to Intervene, Intervenors hereby move for leave to file and do so file hereby and herein as Amicus Curiae the attached Response to the UAW's Objections to Conduct Affecting Election.

I. INTRODUCTION

Volkswagen and the UAW entered into an Agreement for Representation Election (the "Neutrality Agreement") on or about January 27, 2014, under which, inter alia, Volkswagen agreed to provide the UAW with access to its employees and to waive certain rights under Section 8(c) of the Act to discuss the union and the election. Volkswagen then filed an RM petition on or about February 3, 2014. Finnell, Moss, and other employees, after receiving over 600 signatures on an petition opposing the UAW (out of approximately 1,500 eligible employees in the proposed bargaining unit), formed the non-profit group "Southern Momentum"[1] to oppose organization by the UAW, as Volkswagen had indicated that it was required by the Neutrality Agreement to remain neutral in the election. Finnell is also a director of Southern Momentum. After the filing of the RM petition, employee representatives of Southern Momentum asked Volkswagen for access to employees, similar to that which had been provided to the UAW, to ensure that fair and balanced information about the election and the UAW be presented to employees to ensure their ability to make an educated, informed choice in exercising their Section 7 rights. They were denied at virtually every turn. Nevertheless, on February 14, 2014, only eleven days after the filing of the RM petition, VW Team Members chose not to be

[1] Southern Momentum is represented by undersigned counsel.

represented by the UAW, by a count of 712-626.

On February 21, 2014, the UAW filed its Objections to Conduct Affecting Election (the "Objections"). For the reasons discussed below, the employees comprising Southern Momentum have a direct and significant interest in the outcome of the RM petition. Because VWGOA may interpret the Neutrality Agreement to prohibit the company from responding to the Objections, the employees have no amount of certainty that their concerns regarding the Objections will be heard and addressed if they are not allowed to intervene. As such, therefore, it is respectfully requested that intervention be granted.

II. LEGAL ARGUMENT

Intervenors are aware that Section 11194.4 of the Board's Casehandling Manual might suggest a denial of the instant motion. However, it is well-established that the Casehandling Manual does not constitute a binding regulation.[2] What is binding here is Section 102.65(b) of the Board's Rules and Regulations, which provides that "[a]ny person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding." It is clear that the Rules and Regulations permit "any person" to move to intervene and to state (and have heard by the Board) his or her interests in the proceeding. It is also clear that the decision as to whether to grant a motion to intervene should be made on a case-by-case basis, without any blanket rules. Finally, the Board has allowed employees to intervene in election proceedings in the past, and as such it certainly should give full consideration to the employees' interests here, especially since Volkswagen may not respond due to the terms of the Neutrality Agreement. In fact, the Board has previously referred to the Administrative Procedures Act when determining whether to allow intervention,

[2] It also seems likely that the application of Section 11194.4 of the Casehandling Manual would violate VW Team Members' rights to the freedoms of speech and association provided by the First Amendment, equal protection as provided by the Fourteenth Amendment, and due process as provided by the Fifth Amendment.

and that Act states that an "agency shall give all interested parties opportunity" to be a part of the proceedings. Camay Drilling Co., 239 NLRB 997, 998-99 (1978) (citing 5 U.S.C. § 554(c)(1)) (emphasis added).

Again, in prior Board cases, employees have been allowed to intervene. In Coast Radio Broadcasting Corp., 166 NLRB 359 (1967), the Board allowed employee intervention under circumstances quite similar to those in the instant matter. There, the Board, overruling an ALJ decision upon special appeal, allowed employees to intervene in post-election challenges to the company's RM petition. Id. at 371 n.2. See also Shoreline Enters. of America, 114 NLRB 716, 717 n.1 (1955) ("[W]e shall permit these employees to intervene for the limited purpose of entering exceptions to that part of the Regional Director's report on objections which relates to their nonparticipation in the election."); Belmont Radio Corp., 83 NLRB 45, 46 n.3 (1949) (allowing employees to intervene and file exceptions); Western Electric Co., 98 NLRB 1018, 1018 n.1 (1952) (permitting "a group of employees [similar to Southern Momentum] affected by the proceeding" to intervene in a certification election); Taylor Bros., 230 NLRB 861, 861 n.1, 862 (1977) (permitting employees to intervene in a ULP proceeding against the company regarding their voting rights in choosing a bargaining representative); Gem City Ready Mix Co., 270 NLRB 1260, 1261 n.1 (1984) (permitting intervention where employees' seniority rights were challenged).

For the purposes of determining whether a party is sufficiently "interested" to be allowed to intervene, there is no bright-line test or definition. It does not appear, however, that the Board has ever required a high level of scrutiny or compelling circumstances. Instead, individuals "with a concrete interest however small in the proceeding have a right to intervene." American Trucking Ass'n. v. United States, 627 F.2d 1313, 1320 (D.C. Cir. 1980). It certainly appears that

the "interested party" standard is not stringent in Board representational proceedings, since a union with the support of only two employees may participate in election proceedings as a "participating intervenor." See Union Carbide & Carbon Corp., 89 NLRB 460, 460 n.1 (1950). Moreover, it should be stressed that employee rights are the most important underlying interest in election proceedings. See Dana Corp., 341 NLRB 1283, 1283 (2004) (addressing "the importance of Section 7 rights of employees"); Rollins Transp. Sys., 296 NLRB 793, 794 (1989) (stressing "employees' Section 7 rights to decide whether and by whom to be represented").

The interest of the Intervenors in the present matter is patently clear and of an unprecedented level, given the potential effect of the Neutrality Agreement in this case. In its Objections, the UAW repeatedly references the group Southern Momentum, indicating that this non-profit group comprised of and supported by VW Team Members (i.e., Volkswagen employees) "widely published" and "publicly repeated" comments which the UAW represents as affecting the outcome of the election. Objections, pp. 6, 8. The UAW also referenced and attached several articles which were published and/or "linked" by the website administered by Southern Momentum. Objections, p. 12. The UAW also referenced comments made by Southern Momentum and its representatives, characterizing their interpretations of third-party comments about the election as threatening and impacting the outcome of the election. Objections, p. 6. Likewise, in its Objections the UAW indicated that Mike Burton – an employee of Volkswagen and a member of the board of directors of Southern Momentum – "promptly and publicly republished the state officials' threats," adding that "Burton and his supporters broadly distributed" materials relating to the election campaign in this case. Objections, pp. 4-5. The Objections also label comments made by public officials as "part

of a coordinated effort along with … anti-union groups" such as Southern Momentum. Objections, p. 8.

Under these circumstances, the UAW itself has involved Southern Momentum and its representatives, and the VW employees who are its members, by referencing and characterizing their actions during the course of the election campaign. Southern Momentum is comprised of VW Team Members, including Intervenors Finnell and Moss, who certainly have a direct interest in the outcome of this election. See Declarations of Travis Finnell and Sean Moss, ¶¶ 2-7 (attached hereto as Exhibit A). By attempting to negatively characterize the efforts of Southern Momentum, Travis Finnell, Sean Moss, and other similar individuals in its Objections, the UAW opens the door to intervention into this matter by those various individuals.

Furthermore, beyond the specific references to Southern Momentum in its Objections and the effects thereof discussed above, the VW employees who are members of Southern Momentum have a general interest in protecting their Section 7 rights under the Act. The instant proceeding will ultimately determine whether the bargaining unit is exclusively represented by the UAW for the purposes of collective bargaining. Volkswagen employees' Section 7 rights in deciding whether and by whom they may be represented for the purposes of collective bargaining is the utmost interest protected by the Act. Here, as mentioned above, absent intervention it is quite uncertain whether these rights will be protected during these proceedings. Should VW decide to abstain from responding to the Objection based upon the Neutrality Agreement in place between Volkswagen and the UAW (as appears to be the case), appropriate arguments against the Objections and in favor of upholding the election results may not be presented. As such, it is also quite possible that the Section 7 rights of the employees, who exercised those rights on February 12-14, 2014, in voting against the UAW, could be completely

ignored. Allowing the employees to intervene and to continue to exercise their Section 7 rights is the only way to ensure the integrity of the representation proceeding and the paramount interest of the Act itself.

III. CONCLUSION

Based on the above, it is respectfully requested that Southern Momentum and employees Travis Finnell and Sean Moss be allowed to intervene in this matter and to file the attached Response to Objections to Conduct Affecting Election or, in the alternative, that they be allowed to file as amicus curiae the attached Response to Objections to Conduct Affecting Election.

Respectfully submitted,

By: _____
Maury Nicely

By: _____
Philip B. Byrum

EVANS HARRISON HACKETT PLLC
835 Georgia Avenue, Suite 800
Chattanooga, TN 37402
(423) 648-7890

Attorneys for Southern Momentum,
Travis Finnell, and Sean Moss, Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 28th day of February, 2014, caused a copy of the foregoing to be served upon the following counsel of record for the Labor Organization and the Petitioner-Employer by deposit in the United States Mail, postage prepaid and properly addressed as follows:

Michael Nicholson
General Counsel
International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214

James D. Fagan, Jr.
Stanford Fagan, LLC
191 Peachtree St., NE, Suite 4200
Atlanta, GA 30303

Steven M. Swirsky
Epstein Becker & Green, P.C.
250 Park Avenue
New York, NY 10177

and to the National Labor Relations Board by electronic filing and by deposit in the United States Mail, postage prepaid and properly addressed as follows:

Claude T. Harrell, Jr.
Regional Director, Region 10
National Labor Relations Board
Harris Tower
233 Peachtree Street N.E., Suite 1000
Atlanta, GA 30303-1531

EVANS HARRISON HACKETT PLLC

By: _____

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization,

and

SOUTHERN MOMENTUM and MICHAEL BURTON, et al,

Employee Intervenors.

DECLARATION OF SEAN MOSS

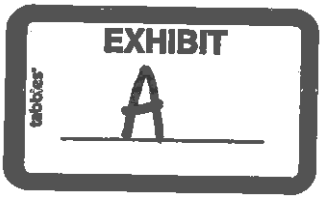
I, Sean Moss, certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

1. I am over the age of eighteen (18) years, and am competent to testify to the facts contained herein, unless otherwise expressly stated.

2. I am a current employee of Volkswagen Group of America-Chattanooga Operations.

3. I was an eligible voter, and did in fact vote, in the election held in this matter on February 12-14, 2014.

4. As an employee of Volkswagen Group of America-Chattanooga Operations, I have a direct interest in the outcome of this matter.



5. I am also a member of a non-profit entity named Southern Momentum, which was referenced in the Objections to Conduct Affecting Election filed by the UAW in this matter and which represents my interests with respect to this matter.

6. At the present time, I wish to intervene in this matter for the purpose of, including but not limited to, filing a response to the Objections to Conduct Affecting Election filed by the UAW in this matter on Friday, February 21, 2014.

7. I feel that it is necessary to intervene in this matter in order to protect my Section 7 rights guaranteed by the National Labor Relations Act.

Sean Moss

02-28-14

Date

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization,

and

SOUTHERN MOMENTUM and MICHAEL BURTON, et al,

Employee Intervenors.

DECLARATION OF TRAVIS FINNELL

I, Travis Finnell, certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

1. I am over the age of eighteen (18) years, and am competent to testify to the facts contained herein, unless otherwise expressly stated.

2. I am a current employee of Volkswagen Group of America-Chattanooga Operations.

3. I was an eligible voter, and did in fact vote, in the election held in this matter on February 12-14, 2014.

4. As an employee of Volkswagen Group of America-Chattanooga Operations, I have a direct interest in the outcome of this matter.

5. I am also of a member of the board of directors of a non-profit entity named Southern Momentum, which was specifically referenced in the Objections to Conduct Affecting Election filed by the UAW in this matter.

6. At the present time, I wish to intervene in this matter for the purpose of, including but not limited to, filing a response to the Objections to Conduct Affecting Election filed by the UAW in this matter on Friday, February 21, 2014.

7. I feel that it is necessary to intervene in this matter in order to protect my Section 7 rights guaranteed by the National Labor Relations Act.

Travis Finnell

2/28/14

Date

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization,

and

SOUTHERN MOMENTUM, TRAVIS FINNELL, and SEAN MOSS, et al,

Employee Intervenors.

RESPONSE OF SOUTHERN MOMENTUM, TRAVIS FINNELL, AND SEAN MOSS IN OPPOSITION TO THE UAW'S OBJECTIONS TO CONDUCT AFFECTING ELECTION

On or about February 21, 2014, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW" or the "Union") filed its Objections to Conduct Affecting Election (the "Objections") regarding the National Labor Relations Board (the "Board" or the "NLRB") election held for employees (or "VW Team Members") of Volkswagen Group of America, Inc. ("Volkswagen," "VWGOA," or the "Employer") on February 12-14, 2014. Intervenors Southern Momentum, Travis Finnell, and Sean Moss, et al, come now and file their Response in Opposition to the Objections.

I. INTRODUCTION

On or about January 27, 2014, VWGOA and the UAW entered into an Agreement for a Representation Election (hereinafter referenced as the "Neutrality Agreement") which, among other things, provided the UAW with unprecedented access to VWGOA employees through the course of its election campaign in Chattanooga, Tennessee. UAW representatives were provided with free office space at the VWGOA facility in Chattanooga, safety equipment to allow UAW representatives to wander freely throughout the facility during production hours, and the opportunity to make speeches to employees in a group setting during working hours. Despite repeated requests for equal access to employees (as well as a copy of the Excelsior list in this matter), groups representing the interests of employees opposed to the UAW effort were denied such access.[1]

On or about February 3, 2014, an RM petition was filed requesting a secret ballot election to be held beginning nine days later (February 12). The election was held on February 12-14, 2014, during which time approximately 90% of the 1,500 eligible employees in the proposed bargaining unit exercised their vote. At the conclusion of the election, it was determined that VW Team Members voted 712 to 626 to reject the UAW.

Now, despite the unprecedented advantages provided to the UAW during the course of its election campaign, the UAW seeks to void the results of the election, on the exceedingly thin ground that third-party interference by local politicians and media sources unlawfully impacted the results of the election. As discussed in more detail below, these allegations are simply without merit and are unsupported by existing law.

[1] This includes Intervenor Southern Momentum, a non-profit group representing VW Team Members which collected over 600 signatures (representing 40% of the bargaining unit) opposing the UAW effort at the Chattanooga facility.

II. LAW AND ARGUMENT

A. Applicable Standards

It is well-established that the standards for setting aside a Board election are incredibly high. The Board will overturn the results of a representation election based on misconduct not attributable to a party to the election only if the misconduct was so substantial or aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. See Bloomfield Health Care, 352 NLRB 252, 256 (2008) (citing Robert Orr-Sysco Food Servs., 338 NLRB 614, 615 (2002)); N.L.R.B. v. V&S Schuler Engineering, Inc., 309 F.3d 362, 375 (6th Cir. 2002); N.L.R.B. v. AmeriCold Logistics, Inc., 214 F.3d 935 (7th Cir. 2000); Deffenbaugh Indus., Inc. v. N.L.R.B., 122 F.3d 582 (8th Cir. 1997); Pacific Micronesia Corp. v. N.L.R.B., 219 F.3d 661 (D.C. Cir. 2000). N.L.R.B. v. Maryland Ambulance Servs., Inc., 192 F.3d 430 (4th Cir. 1999). This standard is more stringent than that for *party* inference with an election, where it must be shown only that conduct "reasonably tend[ed] to interfere with the employees' free and uncoerced choice." Bloomfield Health Care, 352 NLRB at 256. When assessing the probable impact of particular incidents, therefore, conduct which is not attributable to either the company or the union is accorded far less weight. N.L.R.B. v. Maryland Ambulance Servs., Inc., 192 F.3d 430, 436 (4th Cir. 1999).

The burden of showing adequate reasons for setting aside an election is upon the complainant. Ormet Corp., 122 NLRB 159, 161-62 (1958); Eastern Metal Prods. Corp., 116 NLRB 1382, 1383 (1956); N.L.R.B.. v. Bar-Brook Mfg. Co., 220 F.2d 832, 835 (5th Cir. 1955). Also, the standard for whether threats or other comments made by third-party individuals were sufficient to improperly sway an election is an objective test, and subjective employee reactions are not considered relevant. Electra Food Machinery, 279 NLRB 279, 280 (1986); N.L.R.B. v.

Flambeau Airmold Corp., 178 F.3d 705, 708 (4th Cir. 1999).

The U.S. Court of Appeals for the Sixth Circuit generally mirrors the heightened standard applied by the Board when analyzing whether third-party comments are sufficient to constitute unlawful interference. To that end, "[t]he Board rarely overturns the results of a representation election because of misconduct not attributable to a party to the election. The Board will overturn an election based upon the misconduct of third parties only if that 'misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.'" N.L.R.B. v. V&S Schuler Engineering Inc., 309 F.3d 362, 375 (6th Cir. 2002) (quoting Westwood Horizons Hotel, 270 NLRB 802, 803 (1984)); Detroit Auto Auction, Inc. v. N.L.R.B., 1999 WL 435160, *4 (6th Cir. June 17, 1999). "In order to make a prima facie case for invalidating an election, an objecting party ... 'bears the burden of demonstrating that there exist material issues of fact concerning whether the objectionable conduct affected the results of the election.'" Id. at 376 (quoting Colquest Energy, Inc. v. N.L.R.B., 965 F.2d 116, 119 (6th Cir. 1992)). The objecting party "must prove not only that unlawful acts occurred, but that 'the conduct interfered with the voters' exercise of free choice,' and that it did so 'to such an extent that [it] materially affected the results of the election.'" Id. (quoting Colquest Energy, Inc., 965 F.2d at 119-20). See also Leslie Haulers, Inc. v. N.L.R.B., 1996 WL 690157, *2 (6th Cir. Nov. 27, 1996) (finding that Colquest sets a "high standard" for overturning an election).

Finally, it is noteworthy that the UAW itself has also recognized the high level of scrutiny applied to an objection seeking to overturn a Board election based on alleged third-party interference. In 2007, the UAW responded to the objections of an employer that was trying to overturn the results of a Board election based on alleged third party interference by politicians and public figures (as the UAW is itself attempting to do in this matter). See Petitioner's Brief in

Opposition to Employer's Objections to Election, Trump Plaza Assocs., 352 NLRB 628 (2008) (Case 04-RC-21263) (attached hereto as Exhibit A). Specifically, the UAW correctly pointed out the fact that "[t]he Board, often with court support, has repeatedly held that representation elections are not easily set aside." Id. at 3. The UAW also properly stated that "[t]he Board has been clear that there is a strong presumption that ballots cast under Board safeguards reflect the true desires of employees." Id. (citing Lockheed Martin Corp. 331 NLRB 852, 854 (2000); Nocal Ready Mix, 327 NLRB 1091, 1092 (1999); N.L.R.B. v. Hood Furniture Mfg. Co., 941 F.2d 325, 328 (5th Cir. 1991); N.L.R.B. v. Monroe Auto Equip., 420 F.2d 1329, 1333 (5th Cir. 1973)). The UAW also correctly noted that "the burden of proof on the objecting party is quite heavy." Id. at 4 (citing Antioch Rock and Ready Mix, 327 NLRB 1091, 1092 (1991); Kux Mfg. v. N.L.R.B., 890 F.2d 804, 808 (6th Cir. 1989); Chicago Metallic Corp., 273 NLRB 1677, 1704 (1985)). It is in the shadow of this considerable burden, recognized by the UAW itself in a similar case where a party objected to election results based upon third-party comments by public officials, that the UAW now asks that the present election be set aside.

B. The Conduct at Issue in the Present Case Does Not Meet the Heightened Standard Required for the Board to Overturn the Results of the Election.

In the present case, the UAW stretches gymnastically to label comments made by public officials during the course of the election campaign as "threats." Even a cursory review of these comments, however, reveals that the UAW's characterization of these remarks is inaccurate and misleading.

First, the UAW contends that Tennessee State Senate Speaker Pro Tem Bo Watson made "threats" when commenting that "the workers that will be voting, need to know all of the potential consequences, intended and unintended, should they choose to be represented by the United Auto Workers." Objections, pp. 2-3. How can this comment realistically be

characterized as a threat? At most, this is a neutral comment, and it represents good advice, recommending to VW Team Members that they fully consider all of the information available to them before casting their votes. Similarly, the UAW references Senator Watson's remark that "I believe the members of the Tennessee Senate will not view unionization as in the best interest of Tennessee. The Governor, the Department of Economic and Community Development, as well as the members of this delegation, will have a difficult time convincing our colleagues to support any Volkswagen incentive package." Objections, p. 3. Again, this comment makes no threat toward VW Team Members. At most, Senator Watson indicates his personal opinion that he and other members of the legislature might meet with some resistance in seeking additional incentives for a unionized facility; this sort of speculation is certainly within the purview of an elected official charged with seeking incentive funds from a legislative body such as the Tennessee General Assembly. At no time did Senator Watson threaten that he would not pursue incentives in the event that the UAW were elected; to the contrary, Mr. Watson's comments indicate that his role would be to *continue* to attempt to convince his colleagues to support such an incentive package. As such, Mr. Watson's comments cannot be realistically characterized as a threat of any kind, but rather constitute his personal opinions as to the political impact of the election upon his own efforts to assist Volkswagen and its expansion plans.

Certainly, the above comments do not indicate a threat of harm with respect to existing VW Team Members' jobs. Prior to the election, discussions repeatedly arose as to the *expansion* of the Volkswagen facility and the addition of *additional* jobs in the future. At no time was any commentary introduced to the effect that the Chattanooga facility would be shut down or relocated, or that a single job would be lost, in the event that the UAW was elected to represent employees at that location. As such, the argument of the UAW that these comments "were a

blatant attempt to create an atmosphere of fear of harm to VWGOA employees, their jobs, and the viability of their employer" is overblown and without basis. Objections, p. 5.

Next, the UAW focuses upon comments made by U.S. Senator Bob Corker to the effect that "he had been 'assured' by VWGOA that if the VWGOA workers voted against the UAW, they would be rewarded with a new product line at Chattanooga." Objections, p. 7. When examined in context, however, Senator Corker's comments must be taken, not as a "threat" to VW Team Members, but as a response to repeated assertions indicating that UAW support was a necessary prerequisite for future plant expansion. In the days and weeks leading up the election, public comments were made by various officials – some possessing the authority to influence the decision as to the manufacture of a new SUV in Chattanooga – indicating that no expansion would occur *unless* workers voted to support the UAW. By way of example:

- On or about June 24, 2013, Stephan Wolf, described as "a high-ranking labor leader who sits on VW's supervisory board," was quoted in *Automotive News* as remarking that the supervisory board would not authorize the addition of a second assembly line at the Chattanooga facility "until the plant joins the works council that represents all of VW's other assembly plants." This comment, which was described in the article as a "threat," was coupled with a remark by Horst Neuman, VW's Board Member for Human Resources, that "the company cannot start a local works council at the Chattanooga plant unless the workers vote for representation by the UAW or another union." Seizing upon this comment, UAW President Bob King was quoted as saying, "If I was a worker, if I was a member of the Chattanooga community, and I wanted to have the best chance of getting new investment and new product, I would want a voice on the world employee council." These comments, therefore, were intended to create the impression that the *only* way to secure a second manufacturing line at the Chattanooga facility was to vote in favor of the UAW in the upcoming election.[2]

- In an op-ed piece published in the *Chattanooga Times-Free Press* on February 10, 2014 (two days prior to the election), U.S. Representative Steve Cohen (D-Tenn.), after offering his opinion as to reasons that VW employees should work to create

[2] "An Ultimatum for VW Chattanooga?" *Automotive News* (June 24, 2013). A copy of this article is attached as Exhibit B.

a works council at the Chattanooga facility, remarked that "before a works council can be created, though, the plant must first have a union."[3]

- On February 14, 2014 (during the election), U.S. President Barak Obama also weighed in to this issue, in an article entitled "Obama Endorses UAW Bid to Organize VW Plant." As reported by this article, which was released while employees were still voting in the election, "[The President] said everyone favors the UAW except local republicans who are 'more concerned about German shareholders than American workers.'"[4]

- Incredibly, only five days after the UAW election, Bernd Osterloh, the head of VW's Works Council and a member of the VW supervisory board, reiterated threats to employees in light of their rejection of the UAW. According to Mr. Osterloh, "I can imagine fairly well that another VW factory in the United States, provided that one more should still be set up there, does not necessarily have to be assigned to the South again." He then went on to remark that "if co-determination isn't guaranteed in the first place, we as workers will hardly be able to vote in favor" of building another plant in the southeastern United States.[5]

- Building upon the comments made by Mr. Osterloh, his February 19 comments were read aloud to VW Team Members at a mandatory "all-team meeting" on February 24, 2014 by Sebastian Patta, Vice President of Human Resources at the Chattanooga plant. Without a doubt, this action served to reinforce Mr. Osterloh's warning that further expansion would not occur absent unionization.

Senator Corker's comments must be examined in the context of this ongoing discussion as to the impact of the UAW decision upon further expansion of the Chattanooga facility. On repeated occasions, third-party individuals – as well as German officials with a direct role in making the ultimate decision as to whether expansion at the Chattanooga facility will occur[6] – have made explicit threats conditioning such expansion upon a vote in favor of the UAW.

[3] "Outside Groups Behind Anti-UAW Push," *Chattanooga Times-Free Press* (February 10, 2014). A copy of this article is attached as Exhibit C.

[4] "Obama Endorses UAW Bid to Organize VW Plant," *Detroit News* (February 14, 2014). A copy of this article is attached as Exhibit D.

[5] "VW Workers May Block Southern U.S. Deal if No Unions: Labor Chief," *Thompson Reuters* (February 19, 2014). A copy of this article is attached as Exhibit E.

[6] It is interesting, but not surprising, that the UAW has not expressed similar outrage with respect to comments made by other individuals indicating the expansion will occur *only if* the UAW is approved as the exclusive bargaining representative of VW Team Members. Clearly, it is not the fact of third-party commentary to which the UAW objects, but rather whether the content of such commentary is favorable to the UAW.

Senator Corker's comments, then, served simply to correct these assertions, assuring VW Team Members that they will not risk expansion by voting against the UAW. If anything, Senator Corker's remarks served to correct misperceptions caused by threats indicating that rejection of the UAW would hinder expansion of the Chattanooga plant; in truth, Senator Corker remarked, a vote against the UAW would have no such effect. These comments cannot reasonably be construed as threats sufficient to overturn the election results in this situation.[7]

The UAW's Objections clarify the simple fact that comments by elected officials do not control decisions like the expansion of a manufacturing facility such as the Volkswagen-Chattanooga plant. As the UAW itself notes, "[o]f course, the only entity that can ***assure*** where a product is manufactured is Volkswagen itself." Objections, p. 7 (emphasis in original). It is clear, then, that political representatives have no power to effectuate manufacturing decisions made by German officials as to whether to expand the Chattanooga facility, and it is equally clear that VW Team Members were well-aware of this fact at the time of the election. Since the Board considers whether an individual accused of making a "threat" actually has the power to carry such threats out and whether it is likely that employees acted in fear of the carrying out of such threats, it is highly relevant that Senator Corker, Senator Watson, and other elected officials do not control Volkswagen's decisions regarding if and where to expand, a fact of which VW employees would have been fully aware. Crown Coach Corp., 284 NLRB 1010, 1010 (1987) (citing Westwood Horizons Hotel, 270 NLRB 802 (1984)).

Thus, expressions by public officials as to their opinions concerning what *might* happen in the wake of an election such as this do not constitute coercive behavior. Otherwise, elected

[7] In addition, it should be noted that, by the time that Senator Corkers' comments were released (the evening of February 12, 2014), it was commonly known that approximately 1,000 of the 1,500 VW Team Members in the proposed bargaining unit had already voted in the election, thus limiting the potential impact of those comments upon eligible employee voters.

officials would be effectively curtailed from offering their opinions on a multitude of political and business issues impacting their communities. Such a dangerous precedent cannot be set without improperly muzzling the voices of duly elected officials; under these circumstances, it is clear that comments made by Senator Watson, Senator Corker, and others during the course of the election campaign in this situation should not be labeled as coercive, threatening behavior.

One additional factor examined by the Board in determining whether third-party interference improperly impacted an election is whether the employer took steps to "disavow" the content of the third-party statements at issue. See Richland Textiles, Inc., 220 NLRB 615, 619 (1975) (adopting recommendation of ALJ who found that the company violated Section 8(a)(1) of the Act by failing to repudiate a letter from a state representative who told employees that a union victory would cause the plant's closure and that "hundreds of people would lose their jobs"). Here, even if it could be determined that "threats" were made by public officials, the simple fact remains that VWGOA *immediately* took steps to disavow any implication that VW Team Members' votes would have an impact upon the decision of whether to bring a new SUV line to the Chattanooga facility.

Referring to comments made by Senator Corker on the evening of Wednesday, February 12, 2014, the UAW contends that "standing alone, it is a more than adequate basis for sustaining these objections." Objections, p. 10. Even the UAW, however, notes that Senator Corker's opinions were disavowed by the UAW, stating that "VWGOA Official Frank Fisher denied any link between a vote against UAW and the placement of the new SUV in Chattanooga." Objections, p. 8. In fact, *fewer than two hours after Senator Corker's comments,* Volkswagen AG issued "a brief but bluntly worded statement" commenting that "a vote this week on UAW representation at its Chattanooga, Tenn., plant would have no bearing on whether it will build a

new crossover vehicle there." Frank Fisher, Chairman and CEO of VWGOA-Chattanooga Operations, was quoted in the statement as remarking, "there is no connection between our Chattanooga employees' decision about whether to be represented by a union and the decision about where to build a new product for the U.S. market."[8] Thus, even if VW Team Members could have thought – for a period of fewer than two hours – that some link existed between their vote and the decision whether to manufacture a new SUV in Chattanooga, they were promptly disabused of that notion, thus limiting the impact of third-party comments in this situation.[9] Under these circumstances, and in light of the Board's consistent precedent on this issue, there is simply no evidence from which the Board could conclude that comments made by public officials during the election campaign were "threatening" or "coercive" so as to invalidate the results of the election in this situation.

The remaining allegations set forth in the UAW's Objections relate to editorial pieces and other articles released in media outlets throughout the United States. Clearly, news media interpretations as to the election and the consequences of various outcomes cannot be labeled as "threatening" behavior which might coerce employees' reasoned choices. It is well known that editorial comments and similar articles are simply opinions – nothing more – and have no power to negatively impact employee choices. Otherwise, no union election could stand, as there will always be editorial speculation as to the campaign, the results of the vote, and implications of the employees' choice. There is simply no basis for the UAW's position here that materials

[8] "VW Counters Corker, Says New Product Not Linked to UAW Vote," *Thompson Reuters* (February 12, 2014). A copy of this article is attached as Exhibit F.

[9] Interestingly, VWGOA has never issued a similar disavowal in response to comments made by Bernd Osterloh, the head of VW's works council and a member of the VW supervisory board. Immediately after the election results were announced, Mr. Osterloh commented publicly that the Chattanooga facility would not be expanded to take on the new SUV line if workers did not vote in a union. In that instance, VWGOA let the comments stand (and actually re-read them to employees during a mandatory "all-team meeting" on February 24, 2014), a clear departure from their practice in responding to comments made by third-party elected officials.

contained in newspaper articles, television programs, and internet websites constituted "threatening" behavior sufficient to overturn the results of an election in which approximately 90% of the bargaining unit participated. The invalidation of this election under such circumstances would set a dangerous precedent for the future. There is no showing here that any materials published by news media were authorized or ratified by Volkswagen representatives, or that they were in any way tied to the decision as to whether to expand manufacturing operations at the Chattanooga facility. Thus, there is simply no basis, nor is there any legal precedent, for the conclusion that these reports constituted "threats" sufficient to invalidate the election results. There is certainly no evidence that any comments were so substantial or aggravated as to create a general atmosphere of fear and reprisal rendering a free election *impossible*, as is required under the Board's standards, especially where, as recognized by the Board, the courts, and the UAW, elections are so rarely set aside and there is such a strong presumption that the ballots cast in the election represent the true desires of the employees.

C. Certification of the Election Results is in Accordance with Prior Decisions Issued by the Board in Comparable Cases.

A review of Board case law where similar third party inference claims have been made with respect to comments made by public officials shows that the facts in this case have much in common with recent Board decisions dismissing such objections and allowing the vote of the employees to stand. In Saint-Gobain Abrasives, Inc., 337 NLRB 82 (2001), a U.S. Congressman actively campaigned on behalf of the union, going so far as to accuse the employer of deceiving employees regarding a campaign speech. Id. at 82. He also made statements in a letter to all of the employees indicating that he interpreted the Act as being biased toward employers. Id. After the union won the election by a narrow margin (406 to 386), the employer objected based upon the Congressman's comments; the Board, however, did not upset the election, finding that the

conduct did not disturb the "laboratory conditions" of the election. Id. The Board also found, as it had in other similar cases, that the employees were unlikely to confuse public officials with the Board or its representatives, a factor that weighed in favor of dismissing such objections. Id. Even the dissenting Board Member noted that he did "not question the right of Congress-persons to campaign for one side or the other in connection with a [Board election]." Id. Here, as in the Saint-Gobain case, it is clear that VW Team Members could not confuse elected officials with the Board, VW, or the UAW, a factor which weighs in favor of upholding the results of the present election.

Similarly, in Chipman Union, Inc., 316 NLRB 107 (1995), a U.S. Congresswoman sent a letter on House of Representatives letterhead to over 500 workers shortly before the election. Id. at 107. In that letter, she stated her support for the workers' "struggle," urged them to continue to "fight and strike for fairness in the workplace," and said that it was important for the workers to "unite, organize, and support each other..." Id. The Board found that the letter did not unduly interfere with the election, and that it simply reflected the Congresswoman's "personal expression of a political and partisan being speaking for herself." Id.

In Ursery Companies, 311 NLRB 399 (1993), a member of the Connecticut House of Representatives wrote a letter endorsing the union. Id. at 399. The union reprinted the letter on its stationary and distributed it to the company's employees. Id. The Board found that the letter did not violate the laboratory conditions of the election, noting that sophisticated workers were not likely to confuse the legislator with the Board and would not assume governmental endorsement of the union by reading the letter. Id. at 399, n.1.

Finally, in Trump Plaza Associates, 352 NLRB 628 (2008), there was a barrage of pro-UAW campaign materials in the two weeks before the election. The materials "included letters

and resolutions from Federal, State, and local elected officials" which were re-sent by the UAW to employees and/or posted regularly on their website. Id. at 628, 631-32. Just six days before the election, moreover, a U.S. Congressman, a state senator, and a state assemblyman took part in a televised mock card check, during which they actually "counted" cards and announced a "certification of majority status forming a union." Id. at 628, 632. Despite the intense, vigorous campaign by politicians and public officials, and despite a televised event that seemingly could have caused much confusion among employees, the Board dismissed the objections and let the election stand. Id. at 632-33.

As the above cases demonstrate, the Board has consistently held that, as long as there is no confusion between a public figure and the Board itself or its agents, politicians are allowed interject their opinions into representation elections. Public officials have the right to speak on matters of importance to their communities, and they have the right to take sides and to say why they believe that employees should vote one way or the other. The public figures in this case did that very thing. The fact that their opinions were based, at least in part, on their beliefs that the election would not affect a possible expansion one way or the other or that a vote for the union might make it more difficult for the employer to obtain further governmental incentives does not change the fact that their comments were their own opinions – opinions that have traditionally been allowed by the Board.

In those rare cases in which the Board has found that third-party opinion or personal beliefs crossed the line to become unlawful interference, the conduct in question involved threats of immediate job loss and/or threats of physical harm – neither of which occurred here. See, e.g., Falmouth Co., 114 NLRB 896, 897-99 (1955) (election overturned where threats of immediate plant closure were made by local businesspeople and a former mayor, all of whom were deemed

to have influence over a potential decision to close the plant); James Lees and Sons Co., 130 NLRB 290, 298-99 (1961) (election overturned where company made, and local businesses and media repeated, specific threats of the closing of the plant); Ely & Walker, 151 NLRB 636, 650 (1965) (election overturned where the mayor and a member of the chamber of commerce actively campaigned against the union, telling employees that they "would not have a union because the (company) was opposed to it, that the (company) would pay a lawyer $1,000 a day to keep the union out, and that it would do the employees no good to get a contract because the (company) would merely 'sweat it out.'").

The comments here are similar to those occurring in cases where the Board has consistently refused to overturn election results. The conduct in question consisted of public figures' expression of their personal beliefs and opinions regarding the election – comments which were met with contrary opinions by other elected officials, VWGOA management, and German officials. As shown above, this type of conduct is completely lawful. None of the public officials mentioned in the Objections told VWGOA employees that they would lose their jobs or that their plant would move if they voted for the union. They simply expressed their opinions as elected officials as to the political outcomes of the election, comments which were part of an ongoing, two-sided discussion on those issues. Surely, it cannot be said that these comments were so substantial or aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. Based on the facts of this case and the clear precedent followed by the Board in prior cases, therefore, the Objections must be dismissed.

III. CONCLUSION

Throughout the course of its Objections, the UAW uses the term "threat" a total of 36 times. However, the comments challenged by the UAW do not constitute conduct sufficient to

overturn the election results in this situation. When reviewed objectively and in context, these remarks do not threaten employees with job loss or any other detriment based upon support of the UAW. Rather, they constitute simple, straightforward opinions, which cannot be construed as coercive or threatening under these circumstances.

In this case, the UAW was presented with remarkable advantages and unfettered access to VW Team Members in an attempt to sway their votes. In light of the unprecedented advantages provided to the UAW in this situation – including the provision of benefits by Volkswagen during the campaign itself – it is incredible that the UAW now contends that the election should be invalidated on the basis of a handful of comments made by local officials and news media. In light of existing, consistent precedent, there is no basis for overturning the election based upon the allegations made by the UAW in its Objections. It is axiomatic that while "election campaigns, by their very nature, are rough and tumble affairs, and they typically involve elements of pressure or inducement ... the Board will not set aside an election unless an atmosphere of fear and coercion rendered free choice impossible." NLRB v. Media Gen. Ops., Inc., 360 F.3d 434, 442 (4th Cir. 2004) (citations omitted). The present case does not present the sort of circumstances which justify overturning the reasoned, informed vote of VW employees.

For these reasons, we would respectfully request that the UAW's Objections be overruled, and that the results of the election be certified at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 28th day of February, 2014, caused a copy of the foregoing to be served upon the following counsel of record for the Labor Organization and the Petitioner-Employer by deposit in the United States Mail, postage prepaid and properly addressed as follows:

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EVANS HARRISON HACKETT PLLC

By: _____

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

TRUMP PLAZA ASSOCIATES D/B/A
TRUMP PLAZA HOTEL AND CASINO,

Employer,

and

Case 4-RC-21263

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO,

Petitioner.

PETITIONER'S BRIEF IN OPPOSITION TO EMPLOYER'S OBJECTIONS TO ELECTION

Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino ("Employer") filed five objections to the election held for its employees on March 31, 2007.[1] A formal hearing on these objections was conducted by Chief Administrative Law Judge Robert Giannasi on May 23. This post-hearing Brief is now filed on behalf of Petitioner, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO ("Union"), in opposition to those objections.

[1]Unless otherwise noted, all dates herein refer to 2007.

I. FACTS

The Union filed its initial representation petition with the National Labor Relations Board ("Board" or "NLRB") on or about February 15. (Tr.40:9-41:8.) On February 16, the Union sent the Employer a letter requesting card check recognition. (Employer Exhibit 9.) The Employer declined the Union's request. (Tr.40:5-15.) Pursuant to a Stipulated Election Agreement ("Agreement") approved by the Acting Regional Director on February 27, an election by secret ballot was scheduled for March 31 in the unit set forth in paragraph 13 of the Agreement.

During the election period, the Employer conducted a campaign in which it distributed numerous handouts urging the Trump Plaza dealers to vote no. (Tr.48:21-49:4.) The Union also conducted a campaign during the election period.

During its campaign, the Union received various letters from, and a petition signed by, elected politicians and community leaders. A mock up of these letters and the petition were sent to all the Trump dealers on the *Excelsior* list on March 22 along with a cover letter from the Union. (Employer Exhibit 2; Tr. 30:23 - 31:1.) These letters were also made available on the Union's website. (Employer Exhibit 4(a) through (e).)

On March 25, the Union conducted a mock card check certification event. At that event, U.S. Congressman Robert Andrews, State Senator James McCullough and State Assemblyman Jim Whelan signed a poster titled"Certification of Majority Status" after reviewing the authorization cards. Only two Trump dealers attended this event. (Tr.48:10-20.) A one page reproduction of this poster was kept in the Union hall on a table with various pieces of other campaign literature from March 26 until the election. (Tr. 31:13 - 32:28.)

On March 25, during the eleven o'clock local news, Atlantic City's local NBC affiliate, MGM TV, NBC-4, aired a short news segment and video about the mock card check. (Employer Exhibits 6 and 7; Tr.36:23 - 37:16; Tr.38:23 - 39:4.) The segment ended with the statement "[t]he actual vote will be held this Saturday." (Employer Exhibit 7.)

On March 31, a secret ballot election was conducted. The Tally of Ballots showed that of 530 eligible voters, 324 votes were cast for the Union and 149 votes were cast against participating labor organizations.[2] In all, then, more than 89% of the eligible voters cast ballots in the election and the Union prevailed by a margin greater than 2-1.

II. LEGAL ARGUMENT

Although phrased as five separate items, the Employer's objections can be reduced to two issues: the letters from politicians which the Union received and then used in its campaign; and the mock card check event which was held on March 25 and then reported on later that night. Neither comes close to meeting the Board's standard for overturning an election, particularly in light of the wide margin of victory by the Union.

A. The Board's Standard

The Board, often with court support, has repeatedly held that representation elections are not easily set aside. The Board has been clear that there is a strong presumption that ballots cast under Board safeguards reflect the true desires of employees. See for example, *Lockheed Martin Corp.*, 331 NLRB 852, 854 (2000); *Nocal Ready Mix*, 327 NLRB 1091, 1092 (1999); *NLRB v. Hood Furniture*

[2]One was challenged which was not outcome determinative.

Mfg. Co., 941 F.2d 325, 328 (5th Cir. 1991); *NLRB v. Monroe Auto Equipment*, 420 F.2d 1329, 1333 (5th Cir. 1973). As such, the burden of proof on the objecting party is quite heavy. *Antioch Rock and Ready Mix*, 327 NLRB 1091, 1092 (19991); *Kux Mfg v. NLRb*, 890 F.2d 804, 808 (6th Cir. 1989); *Chicago Metallic Corp.*, 273 NLRB 1677, 1704 (1985).

"[I]t is not enough for the objecting party's evidence merely to imply or suggest that some form of prohibited conduct has occurred." *Cumberland Nursing & Convalescent Center*, 248 NLRB 322, 323 (1980). Rather, the objecting party must present specific evidence not only that the unlawful act occurred but also that such acts "interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election," *Tony Scott Trucking, Inc.*, 821 F.2d 312, 316 (6th Cir. 1987) (citing *Golden Age Beverage Co.*, 415 F.2d 26, 30 (5th Cir. 1969), or that the conduct was so related to the election as to have had a probable effect on employee actions at the polls, *NLRB v. Zelrich Co.*, 344 F.2d 1011, 1015 (5th Cir. 1965), or that the conduct reasonably tends to interfere with voters' free and uncoerced choice in the election. *Frito Lay Inc.*, 341 NLRB No. 515 (2004); *Allen's Electric*, 341 NLRB 112 (2004). The test is an objective one and the subjective reaction of the employees is not relevant. *Picoma Industries*, 296 NLRB 498, 499 (1989).

In making a determination as to whether the conduct had the tendency to interfere with the employees' freedom of choice, the Board will consider the closeness of the election. *Cambridge Tool & Mfg. Co., Inc.*, 315 NLRB 716 (1995). The burden of proof is particularly heavy where the margin of victory is overwhelming. *Avis Rent-A-Car System*, 280 NLRB 580, 581-82 (1992); *Millard Processing Services v. NLRB*, 2 F.3d 258, 264 (8th Cir. 1993).

B. *Saint-Gobain, Chipman Union* and *Ursery Companies* Compel The Board To Dismiss the Objections

In *Saint-Gobain Abrasives, Inc.*, 337 NLRB 82 (2001), the Board held that a Congressman's statements to employees in support of the union did not warrant setting aside the election.[3] The Congressman had campaigned vigorously for the union and had made statements in a letter to all the employees regarding his interpretation of the National Labor Relations Act being biased toward employers. *Id.* at 82 (Hurtgen, dissenting). Nonetheless, the Board found that:

> Congressman McGovern's statements to employees in support of the Petitioner did not upset the laboratory conditions for a fair election and do not warrant setting aside the election. In this regard, we find that the Employer failed to establish that employees 'could not discern the difference between statements made about labor relations by an individual member of Congress and statements made by the Board and its representatives.'

Id. at 82 (citing *Chipman Union, Inc.*, 316 NLRB 107, 108 (1995)). This case is directly on point. As in *Saint-Gobain*, here legislators wrote letters of support for the Union, and the Employer has presented no evidence as to why the employees would not understand the difference between statements made by these individuals and the Board or its representatives. (See Employer Exhibits E-2, E-3, E-4 and E-6.)

Chairman Hurtgen dissented in *Saint-Gobain* explaining that he would have set aside the election because the Congressman gave his opinion on federal labor law as interpreted by the Board. In contrast, in our case, two members of Congress used the platform to advocate for the Employee Free Choice Act. (See Employer Exhibit E-4(b).) These letters did not opine on federal labor law, but rather were advocating for the passage of a new law, which is clearly well within their purview

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[3]In this case, the Union won by a relatively close vote of 406-386, with 18 challenged ballots. *Id.* at 82 (Hurtgen, dissenting).

as legislators. Thus, even under the Chairman's dissent, the legislative letters here must pass muster.

It should be noted that in *Saint-Gobain* even the dissenting Chairman acknowledged that he does "not question the right of Congress-persons to campaign for one side or the other in connection with a National Labor Relations Board election." That is precisely what the Employer is asking for in these objections: The Employer is asking the Board to overturn a landslide victory based on rather bland assertions of support by various legislators. This position simply cannot be tolerated under the Board's precedent.

Chipman Union, supra, also provides on-point precedent for the instant objections. In that case, the Board upheld an election where the employer objected to a letter from a United States Representative to unit employees in support of the union's organizing efforts. The Board found that the letter was not objectionable because it indicated only her personal support. The Board concluded the unit employees would not reasonably construe the letter as an official institutional endorsement of the union by the federal government:

> [W]e find that unit employees would not reasonably construe the foregoing letter as an official institutional endorsement by the Federal Government of a vote for the Petitioner in the representation election. The letter does not even mention the Petitioner, the election, unionization, Congress as a whole, or the National Labor Relations Board, which is, of course, the independent administrative agency directly charged with neutral conduct of representation elections. Furthermore, the letter does not indicate, and the Employer does not claim, that Congresswoman McKinney had any specific authority over labor matters within Congress. Even assuming, as the hearing officer concluded, that the employees would view the McKinney letter as implicitly encouraging them to vote for the Petitioner in the upcoming election, we agree with her further observation that this letter reads as the personal expression of a political and partisan being speaking for herself.

Id. at 107.

As in *Chipman Union*, here the politicians' expressions were only of personal beliefs. Christopher Smith and Frank LoBiondo, two United States Representatives wrote together to endorse the Employee Free Choice Act and to further say that: "We join with you today to offer our strong support for your efforts to exercise your right to organize and strengthen your voice at the workplace. ... You can be sure that we will support your rights to impartially decide to join a union." (Employer Exhibits 2 and 4(b).)

Richard Cody and Joseph Roberts, two members of the New Jersey Legislature, wrote together to say that "we are grateful for the opportunity to voice our complete support and respect for the collective bargaining process. We recognize that employees are entitled to exercise their rights under federal and state labor laws, and that includes the right to participate in organizing campaign." (Employer Exhibits 2 and 4(c).)

Congressman Robert Andrews wrote to say "I have had the privilege of working closely with the UAW and have a positive relationship with this union and think very highly of them and what they represent. I am confident that the UAW will continue to zealously represent its members to protect their rights." (Employer Exhibits 2 and 4(d)).

Atlantic County Freeholder Joe Kelly wrote that he hopes the casinos will take the high road when it comes to the organizing efforts and that, "I also have a great deal of respect for the UAW dealers who have chosen union representation. I want to offer my assistance in good faith and stand ready should the parties wish to discuss a code of conduct for the upcoming election or any other issue." (Employer Exhibits 2 and 4(e)).

State Senator Nicholas Asselta likewise urged the casinos to take the "high road" during the campaign and further wrote that "I have worked closely with the UAW for many years during my

time in the Legislature. I respect the right of employees to bargain collectively, and will continue to work closely with the unions in the State of New Jersey. I appreciate the contributions made by the gaming industry to the Atlantic City area, and New Jersey. Please let me know if I can be of any assistance regarding this matter should the parties wish to discuss a code of conduct for the upcoming election or any other issue." (Employer Exhibit 2).

As such, the letters introduced by the Employer reveal that they express only personal support by individual politicians, at the most. Indeed, as these examples illustrate, many of the letters only discuss the right of the employee to choose and do not specifically call for the employee to vote in favor of union representation. Accordingly, under *Chipman Union*, these letters clearly pass muster.

The document titled "Legislators Sign-On In Support of Atlantic City Dealers" also shows nothing more than personal support by those who signed the petition. (Employer Exhibit 2.) Indeed, the language is quite clear that the document reflects only the personal beliefs of those who signed by using the pronoun "we" and stating that the statement shows these individuals "support the Atlantic City casino dealers' efforts to organize their union." Moreover, it is clearly limited to those who have signed when it begins with the language "[w]e, the undersigned . . .." As such, *Chipman Union* compels the Board to dismiss the Employer's objections with respect to the legislators' petition.

Ursery Companies, 311 NLRB 399 (1993), is another case on point. There, the Board refused to set aside an election where the union had shrunk and then superimposed a state legislator's letter of support onto its stationary. The Board also explained that this state legislator could not be confused with the Board because he did not have the term "Labor" in his title and because the letter

was distributed on Union stationary.[4] Like in *Ursery Companies*, here the legislators' letters could not have been confused for Board endorsements – they were distributed in the Union's hall with other campaign material, or in a manner identical to *Ursery* by being superimposed on the Union's stationary, or through its website. (Employer Exhibits 2 and 4.) Moreover, none of the legislators who wrote letters of support had the term "labor" in his title.

The *Ursery* Board went on to explain that the "concern is whether and under what extent a document imitates a Board publication and under what circumstances it can be said that the Board or the United States favors one party to the election." *Ursery Companies*, *supra*, 311 NLRB at 399. That concern is not present here as the Union never imitated a Board document and it was clear that each and every paper and event was campaign material which did not come from the Board or the United States government.

Ursery also indicated that the Board favors giving credit to the voters: "[W]e believe that the employees are not so politically naive that they would be unable to distinguish between a Connecticut State Representative and the NLRB and to recognize that the former is a state legislator and the latter a Federal agency with no connection to each other." *Ursery Companies*, *supra*, 311 NLRB at fn.2. Similarly, the voters here can be expected to understand the difference between those legislators who wrote letters, signed the petition and signed the mock card check certification and the NLRB.

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[4]The Board distinguished *Columbia Tanning Corp.*, 238 NLRB 899 (1978), which is discussed in more detail *infra*.

C. The Cases Cited By The Employer Are Not Applicable

At the May 23 hearing, the Employer relied on *Archer Services*, 298 NLRB 312 (1990), for the proposition that the conduct it objected to should be evaluated with an objective standard. The Employer argued that under this case, intent does not matter and the only issue is whether the conduct has the tendency to mislead or confuse and that mere ambiguity is enough to meet that standard.

The Employer's reliance on *Archer Services* is misplaced. *Archer Services* falls into a line of Board cases which specifically address altered ballots in election campaigns. See for example, *Professional Care Centers*, 279 NLRB 814 (1986); *Rosewood Mfg. Co.*, 278 NLRB 722 (1986); *Worth Stores Corp.*, 281 NLRB (1986); *SDC Investment*, 274 NLRB 556 (1985). The analysis in these cases focuses explicitly on altered ballots and on whether the distributed document appeared to be an official Board publication attempting to direct employees to vote one way or another. In particular, *SDC* set forth a two part test to determine whether an altered ballot was likely to give voters the impression that the Board favored one party over another. The Board relied on its belief that voters are capable of recognizing campaign propaganda and rejected the Board's previous *per se* test.[5] The Board instead held that if the altered ballot clearly identifies the party responsible for its preparation, it is not objectionable. If, however, the responsible party is not clearly identified, the Board stated that it is necessary to examine the nature and contents of the material on a case-by-case basis to determine whether the document is misleading. 274 NLRB at 557.

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[5]In 1954, in *Allied Electric Products*, 109 NLRB 1270 (1954), the Board addressed an altered ballot situation and held that such conduct implied that the Board endorsed a particular choice. After *Allied Electric*, the Board generally followed a *per se* rule that an altered ballot which tended to undermine the Board's neutrality would cause the election to be set aside.

These cases clearly are not applicable to the instant case where no ballot was defaced and no other official Board document was altered to give the appearance of Board support for the Union. Despite the specificity of these cases however, the Employer does not argue that any sample ballots or other Board documents were altered in any way in this case. Instead, the Employer attempts to extend inappropriately the Board's reasoning in these cases to the documents at issue in this case and to the mock card check.

As for the mock card check, the Employer seems to argue that the Union co-opted the Board's own language. As discussed in more detail below, the words on the poster signed at the mock card check were completely accurate and did not mislead voters. As such, the Employer's attempts to grossly extend the Board's reasoning must fail.

As for the supportive letters from legislators and the petitions they signed, the Employer here argues that *Archer Services* is applicable because these documents gave an impression that the Board endorsed the Union. In *Archer Services*, the Board found that the altered ballot document at issue was "not clearly partisan" because the "voting facts" side of the document covered the same issues addressed in the Board's notice of election. Additionally, nothing was attached to that document which in any way suggested that it was campaign propaganda from the employer. The Board also found that the title of the document, "To Vote Against The Union," sounded neutral and so could have been construed as coming from the Board. Unlike in *Archer Services*, here the letters and petitions at issue were consistently distributed with caveats that they were from the UAW/AC Organizing Committee. Employer Exhibit 2 shows a cover letter from the Organizing Committee introducing these letters. Moreover, the attached collage has the UAW/AC Organizing Committee's name and phone number prominently displayed. Additionally, the titles – "Community leaders

support us!" and "It's time to support ourselves. Vote YES for a voice at work!" – could hardly be more clearly partisan. The petition signed by various legislators also bears the UAW insignia. Its title reads: "LEGISLATORS SIGN-ON IN SUPPORT OF ATLANTIC CITY DEALERS" which clearly shows that these politicians are not attempting neutrality and are being personally supportive of the Union. Moreover, the language of the petition itself is clearly partisan as it reads: "We, the undersigned, support the Atlantic City casino dealers' efforts to organize their union with the United Auto Workers (UAW)."

In *Archer Services*, the altered ballot contained the official U.S. Government and Board seals and stated that it was an official secret ballot. Clearly, none of those elements is presented here. The *Archer Services* Board also held that another reason the altered ballot was misleading is because it "poses the critical question of union representation for which the election is being held." Again, no such facts are presented by this case as there is no altered ballot or Board document of any sort at issue here. These documents which the Employer has challenged clearly present themselves as propaganda unlike the documents at issue in *Archer Services.*

At the hearing, the Employer also relied on *Monmouth Medical Center*, 604 F.2d 820 (3d Cir. 1979). The Employer stated that this case traced Board doctrine with respect to the application of an objective test. (Tr. 9:22 – Tr.11:11.) That case is easily distinguishable from the situation at bar because in *Monmouth Medical Center*, there was a range of objectionable conduct and the results of the election were exceedingly close. *Id.* at 821. The objectionable conduct there included an altered reproduction of an election notice which did not refer to the union by name but which did contain the Board's seal and name. The Court explained that it considered "the possible impact such a partisan message added to an official document, or copy thereof, might have on the freedom

of choice of the voter." Indeed, it was specifically the use of Board documents for partisan purpose to which the Court objected. *Id.* at 826. Obviously, that is not an issue here because, as discussed above, the Employer has not accused the Union of altering or defacing any Board document. In *Monmouth Medical Center*, the objectionable conduct also included documents which referred to Board charges and penalties and gave the incorrect impression that the Board had already made determinations. The Third Circuit also addressed a leaflet which stated that the Board favored the "particular method" of unionization upon which the employees were voting and discussed that Board agents were themselves unionized. Finally, the *Monmouth Medical Center* Court addressed letters which referred voters to the Board with any questions and "suggested that the Board would respond to the employees' questions in a manner favorable to the Union." *Id.* at 829. The Employer has not so much as accused the Union of any conduct which could be comparable to that in *Monmouth Medical Center.*

Monmouth Medical Center cannot be applied to the instant case because the objectionable conduct was not only different in kind from that being challenged in this case but also because the objectionable conduct there was so much more pervasive. Moreover, the *Monmouth Medical Center* Court specifically noted that the closeness of the election was a factor in its decision. *Id.* at n.4 and n.13. Obviously, that factor is not present here because the Union won this election by an impressive margin.

Finally, the Employer cited *Columbia Tanning Corp.*, 238 NLRB 899 (1978). (Tr.11:13 – Tr.12:15.) In that case, the Board overturned a close election because the Massachusetts Commissioner of Labor wrote a letter endorsing the union, in Greek to Greek immigrant employees, on official letterhead which contained the term "labor." The Employer argued that this case is

applicable because it involves a politician endorsing a union in a single letter. However, *Columbia Tanning* is readily distinguishable from the instant case.

The Employer in *Columbia Tanning* had submitted evidence that the labor commissioner had "a significant degree of control over the terms and conditions of employment in . . . Massachusetts, particularly over alien workers." Moreover, the Board found that these immigrant workers could not be expected to readily discern the difference between the state "Department of Labor" and the federal "National Labor Relations Board," particularly in light of the fact that both contained the words "labor" in their titles. The crucial differences between *Columbia Tanning* and the instant case are quite obvious. There is no reference to any "labor" title in any of the documents questioned by the Employer. Further, all the documents were clearly from the Union – they were either on Union letterhead, on its website, kept at the Union hall with other campaign materials, or distributed with a Union cover letter. These facts clearly suffice to show that the Union was "the source of the document in question" and that *Columbia Tanning* does not control the case at bar. For further discussion, see *Ursery Companies, Inc.*, 311 NLRB 399 (1993).

D. Even Under the *SDC Investment* Standard, The Employer's Objections Must Fail

Even if the Board decides to apply the altered ballot cases to the instant objections, the Employer's objections must still fail. Under the first part of the *SDC* test, the letters from the politicians, the petitions and the Atlantic City resolution must be found acceptable because each clearly identified "the party responsible for its preparation." As noted above, they were either formatted on Union letterhead, had Union insignia printed directly on them or had an attached cover

letter from the Union. (Employer Exhibits 2 and 4). If the mock certification event and resulting poster are found not to have clearly identified the party responsible for its preparation, the next question is whether the document is "likely to have given voters the misleading impression that the Board favored one of the parties to the election." 274 NLRB at 557. The mock card check was clearly a staged campaign event. This obvious conclusion is bolstered by the fact that the poster was available at the Union hall with other campaign literature. Simple common sense and logic dictates that voters would be able to understand that this event and its resulting posters could be nothing more than Union campaign material.

E. Resolution No. 235 Does Not Provide A Basis For Overturning This Election

The Employer has also objected to Resolution of Atlantic City No. 235. (Employer Exhibit 4(f).) This resolution, however, is clearly made by the City of Atlantic City and not the Board. Not only is it titled as such, but the City's own insignia appears prominently on the top of the page. Additionally, the resolution only calls for employer neutrality. Under any standard, a voter could not possibly mistake this as a Board resolution and could not reasonably be construe it as a support for the Union by the Board.

F. The Mock Card Check Event Is Not A Basis For Overturning This Election

As discussed above, the Employer's objections to the March 25 mock card check must also fail. The Employer argued at the hearing that this event was confusing because it gave the

impression that the Board had somehow "declared a winner six days before the vote." (Tr.20:21-22.) The Employer's position is that this event "relegated the election to a confirmation." (Tr.15:21-22.)

The mock card check did nothing more than state what was entirely factually accurate – that, based on a review of authorization cards, a majority of full time and regular part-time dealers, dual-rate dealers, and dual-rate supervisors at the Trump Plaza Hotel and Casino had authorized the UAW to represent them in collective bargaining. The poster signed at the event by these politicians states that a majority of the employees "have authorized the UAW to represent them for the purposes of collective bargaining." (Employer Exhibit 3.) There can be nothing misleading about this language because substantively, it is completely factually accurate.[6] Indeed, it paraphrases the UAW Authorization Card which states that the signer "authorize[s] the United Auto Workers to represent me in collective bargaining." (Union Exhibit 1.) The Board has held that while Section 8(c) is not by its terms directly applicable to representation cases, "the strictures of the First Amendment, to be sure, must be considered in all cases." *Allegheny Ludlum Corp.*, 333 NLRB 734, 737 fn. 20 (2001), enfd. 301 F.3d 167 (3d Cir. 2002) (quoting *Dal-Tex Optical*, 137 NLRB 1782, 1787 fn. 11 (1962)). See also, *NLRB v. Gissel Packing Corp.*, 395 U.S. 575, 617 (1969). See also, *BCI Coca-Cola Bottling Company of Los Angeles*, 339 NLRB 67 fn. 2 (2003).

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[6]Any argument that the use of the word "certification" in the mock card check event somehow co-opted the Board's language must also fail. First, the word "certification" has an independent ordinary dictionary meaning that applies to this situation. As such, the Board does not have exclusive jurisdiction over such a word. Second, to the extent that the Employer argues that the public or voters are unfamiliar with the Board's process and so would be confused by a politician's use of this word, that is clearly simple circular reasoning. If the public or the voters are unfamiliar with the Board's election process, they would not view the politician's use of the word "certification" as interloping on the Board's authority.

Additionally, there was absolutely nothing misleading about the format of the mock card check event or the resulting poster. No Board insignia appears anywhere, no Board documents are used or altered in any way, there is absolutely no indication that the Board had anything to do with this event or document. The poster from the event itself and the handout reproduction of the poster were available for viewing and distribution at the Union hall. The handout was on tables along with other partisan campaign literature. (Tr.31:13 – Tr.32:8.) Clearly, the format and distribution of this literature was clear that this was a Union campaign event which had nothing to do with the Board.[7]

G. The Television Broadcast of the Mock Card Check Does Not Merit Overturning the Election

The Employer has also objected to the television broadcast of this event. (Employer Exhibit 5 and 6.) Where the conduct complained of is by a third party, an election will only be set aside if "the conduct created a general atmosphere among the voting employees of confusion and fear of reprisal for failing to vote for or support the Union." *Steak House Meat Company*, 206 NLRB 28 (1973). A third party must meet the "destroys the atmosphere standard" as opposed to the less demanding "tending to influence the outcome of the election" applicable to party conduct. *NLRB v. McCarty Farms*, 24 F.3d 725, fn.5 (5th Cir. 1994). Clearly the local NBC affiliate is not an agent of the Union and the report could not possibly be said to have created a general atmosphere of confusion and fear of reprisal for failing to vote for the Union. Indeed, the report lasted only about thirty seconds, and the poster itself was flashed on the screen so briefly that reading it without a

[7]It is also worth repeating here that only two Trump dealers attended this event. (Tr.48:10-20.)

recording is not even possible. Clearly, this does not meet the Board's standard for third party conduct.

This very short broadcast lasting about thirty seconds specifically concluded by stating that "[t]he actual vote will be held this Saturday." (Employer Exhibit 7.) Voters cannot be considered so politically naive that they are unable to understand that the election itself is the determining event. In *Midland National Life Insurance*, 263 NLRB 127, 130, 132 (1982), the Board made the essential observation that:

> the Board had long viewed employees as aware that parties to a campaign are seeking to achieve certain results and to promote their own goals. Employees, knowing these interests, could not help but greet the various claims made during a campaign with natural skepticism. ... We believe that Board rules in this area must be based on a view of employees as mature individuals who are capable of recognizing campaign propaganda for what it is an discounting it.

Id. at 132. The mock card check reported on in the evening news was clearly a campaign event. The reporter's statement that the election was to be held "this Saturday" was a clear confirmation that this was a staged event in anticipation of the election.[8] No other conclusion is logical.[9]

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[8]Of 530 eligible voters, 473 cast baliots. This is a turn-out of over 89%. Had the electorate believed that the results of the election were pre-determinated, they would have had no motivation to turn out in such impressive numbers. The Employer's argument simply defies logic in light of the facts of this case.

[9]The Board's observation that employees are capable of recognizing propaganda is applicable to all the documents and events objected to by the Employer. As described above, each was so clearly campaign propaganda, and was even identified as such, that no other conclusion is possible under this well established Board precedent.

H. The Union's Large Margin Of Victory

The Union won this election by a wide margin. As noted above, of 530 eligible voters, 324 votes were cast for the Union and 149 votes were cast against the Union. This strong margin of victory clearly counsels in favor of upholding the election. See *S.F.D.H. Associates, L.P. d/b/a Sir Francis Drake Hotel*, 330 NLRB 638 (2000) (Petitioners' large margin of victory a factor in overruling objections.).

III. CONCLUSION

For the foregoing reasons, the Employer's objections to the election should be dismissed and the results of the election should be certified.

Respectfully submitted,

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June 18, 2007

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief in Opposition to Employer's Objections to Election to be served upon the following by Overnight Mail on the date indicated below.

(Original and 3 copies)

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Date: June 18, 2007

Automotive News

An ultimatum for VW Chattanooga?

No union may mean no new product

Amy Wilson and Gabe Nelson
Automotive News | June 24, 2013 - 12:01 am EST

CHATTANOOGA -- When workers try to unionize, they often hear that their factory will lose business if they do. Here at Volkswagen AG's only U.S. assembly plant, they are hearing exactly the opposite.

Last week, a high-ranking labor leader who sits on VW's supervisory board told a German news agency that the board wouldn't authorize the addition of a second assembly line at the $1 billion Chattanooga plant or any new product until the plant joins the works council that represents all of VW's other assembly plants.

VW has long talked about bringing a large SUV to the plant, which has built the mid-sized Passat sedan since 2011.

"We will only agree to an expansion of the site or any other model contract when it is clear how to proceed with the employees' representatives in the United States," a report published Tuesday, June 18, by the news agency dba quoted the labor leader, Stephan Wolf, as saying.

The remarks raised the stakes of the politically sensitive organizing campaign already under way here and delivered a ready-to-serve talking point to the UAW, which is in talks with VW about how to make a German-style labor model work at the Chattanooga plant.

During an exclusive interview Wednesday with *Automotive News*, UAW President Bob King was quick to seize on Wolf's remarks to tout the benefits of organizing the Chattanooga plant, the only VW assembly plant absent from the works council.

"If I was a worker, if I was a member of the Chattanooga community, and I wanted to have the best chance of getting new investment and new product, I would want a voice on the world employee council," King said. "I would want somebody there representing the interests of Chattanooga. I wouldn't want a decision made where every other plant in the world has representation there, and I don't have somebody speaking up for me."

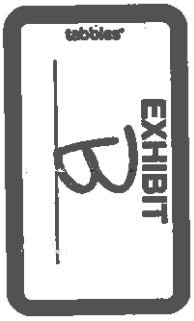
A trans-Atlantic tiff

Wolf's comments also pose a pointed challenge to Tennessee Gov. Bill Haslam and other critics of organized labor, highlighting the delicate labor politics that VW must navigate in both Tennessee and Germany.

Haslam and other Republican officials from the state have spoken out against the UAW's organizing effort, seeing the campaign as an economic threat to a state that has successfully lured manufacturing plants and jobs with "right to work" laws that make it more difficult to unionize. UAW opponents say the Chattanooga plant doesn't need a union because workers there have comparable pay, benefits and working conditions to their counterparts at unionized plants.

"This subject has never come up in any discussions between the state and VW," David Smith, a Haslam spokesman, said of Wolf's remarks. "The governor has spoken with a number of employees in Chattanooga, and they are very comfortable with the way things are now. Volkswagen continues to be very successful with the current structure."

Haslam's stance has frustrated labor leaders in Germany, who see the nonunion plant potentially undermining



labor rights back home.

"We work with strong unions back home," said Horst Mund, head of the international department at IG Metall, the industrial union that represents about 90 percent of VW workers in Germany. "And if we allow union-free zones elsewhere, that will sooner or later fall back on us."

Workers' clout

By law, plants in Germany operate under a so-called codetermination system, in which labor leaders get as many as half the seats on a company's supervisory board, with influence over the hiring and firing of top executives.

Employee representatives at VW also get a say in new products and investments through the company's global works council, which includes representatives from all of its organized plants.

That may give labor leaders at VW enough power to follow through on the threat made by Wolf, the deputy chairman on the global works council.

"Investment decisions are made on a number of criteria," IG Metall's Mund told *Automotive News* last week. "

Of course, it's in our interest that the issue of representation is one of the criteria."

Horst Neumann, VW's board member for human resources, told American reporters in March that the company cannot start a local works council at the Chattanooga plant unless the workers vote for representation by the UAW or another union. That is because U.S. law bars employers from starting their own union.

Under federal law, if more than half the 2,700 employees at the Chattanooga plant were to sign cards for union representation, VW could recognize the union -- opening the door for a works council -- or insist on a vote.

Organizers at the plant have been collecting cards for more than a year.

King wouldn't speculate on the level of support for the union among Chattanooga employees or the timetable for a vote or recognition decision. But when asked whether the Chattanooga plant or another nonunion assembly plant in the South could be organized by June 2014, when King is scheduled to step down, he replied: "I'm an optimist."

Bob King: "I'm an optimist."

Cohen: Outside groups behind anti-UAW push

By By Rep. Steve Cohen
Monday, February 10, 2014

Chattanooga's Volkswagen plant is the target of outside anti-union groups.

Over the last century, the American middle class grew — thanks in no small part to labor unions formed to represent the interests of the workers who drive our economy forward. They have been an important ally in the fight to ensure everyone who works hard and plays by the rules has a fair shot to succeed.

But in recent years, the opportunity gap between hardworking Americans and the CEOs they often work for has exploded, making organized labor as important as ever.

To preserve the middle class for our children, we must respect the right to organize. But at the Chattanooga Volkswagen plant that right is not being adequately respected by outside groups.

The United Auto Workers is trying to help Volkswagen and its workers succeed together by retaining jobs, improving quality and efficiency, and protecting workplace safety.

Volkswagen and UAW are working together to redefine American labor-management relations for the better by creating a "works council" at the Chattanooga plant like those present at most other VW plants. It would be revolutionary for the manufacturing industry, fostering more collaboration between management and workers on everything from plant rules to working hours and leave policies.

And it would help bring new jobs to Tennessee. Everyone involved -- Tennessee, Volkswagen and our citizens -- would benefit. Before a works council can be created, though, the plant must first have a union.

Unfortunately, some deep-pocketed, Washington-based special interest groups have stepped in to block that from happening. In recent months, outside anti-labor groups have attempted to discourage workers at the VW plant from joining the UAW, even though Volkswagen itself is not opposing unionization. These groups are trying to start a fight that no one -- not VW, not Chattanooga, and not the workers -- wants.

Anti-union groups have their own interests at heart; they're not looking out for Tennesseans. The decision to create a works council and choose union representation belongs to the workers, and no one should interfere with that right. I hope these outside groups are unsuccessful in swaying the outcome of the VW election later this week.

With union representation, Chattanooga workers will participate in workplace discussions on safety, job security and efficiency. And they can join the VW Global Works Council to have a say in corporate policies as well -- something that could lead to more manufacturing jobs here in our country. But today, as one of the few VW assembly facilities in the world without a seat on the VW Global Works Council, Chattanooga doesn't have that opportunity.

Over many years, the UAW has demonstrated its ability to work with business, communities and government to benefit each. They played a leading role in re-opening GM's Spring Hill plant, which the company closed after declaring bankruptcy. This resulted in investment for expanded production of more than $350 million in Tennessee, a big win for our state, the plant's workers and the middle class.

If we claim to be a society that values a strong middle class and fairness in the workplace, we must also respect employers that allow workers to choose representation in a free, fair environment. In allowing its employees to expand their role in the workplace, Volkswagen has taken an important stance that Americans should expect from companies that seek to do business here.

Manufacturing jobs are the backbone of a strong middle class, and the right to organize must be respected if we want to grow more of them. With union representation, safety and health improves, hard-working employees make decent livings and everyone works together to achieve mutual success for the region, the company and the workers.

The right to choose representation belongs to workers, but the benefits come back to all of us.

Rep. Steve Cohen, D-Tenn., represents the 9th Congressional District.

EXHIBIT
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Aide: Obama endorses UAW bid to organize VW plant

Tue, Feb 25 detroitnews.com

Chattanooga, Tenn.— President Barack Obama told House Democrats at a closed-door meeting Friday that he questions why some Republicans oppose the United Auto Workers' bid to organize the Volkswagen AG plant in Chattanooga, Tenn., according to a member of Congress and two House Democratic aides who attended the speech.

About 1,570 workers at the 4-year-old VW assembly plant here are completing the third day of voting on whether to form a German-style works council and if they want the UAW to represent them in bargaining for wages and benefits.

Obama raised the issue on his own after getting a question on unemployment insurance from a House Democrat. He said everyone favors the UAW except local Republicans who are "more concerned about German shareholders than American workers."

Obama made the comments as he talked about the rise in income inequality and the role unions can play in combating it, according to those who attended the speech. Obama noted that VW supports the right of workers to join a union, and workers are going through the process of deciding whether to join. He said that some Republicans are putting the interests of German shareholders ahead of workers in Tennessee who would benefit.

Reuters reported the comment earlier. The White House didn't immediately offer a comment.

Sen. Bob Corker, R-Tenn., has sharply criticized the UAW and asserted that VW will announce it will build a midsize SUV at the plant if workers reject the UAW. VW issued a statement denying the comments. Corker has said it would be "damaging" to the local economy if workers join the UAW because it would scare suppliers into locating elsewhere.

Conservative groups here have tried to convince workers not to vote to join the UAW because of its support for Obama. One billboard here features the words "United Auto Workers" with "auto" crossed out and replaced in spray paint with "Obama" to read "United Obama Workers. The billboard adds: "The UAW spends millions to elect liberal politicians including Barack Obama."

It doesn't mention that only voluntary contributions from members can be used for political activities — not general dues.

This month, Vice President Joe Biden and Labor Secretary Thomas Perez both praised the idea of German-style works councils and the UAW's embrace of the new approach. Biden said he wouldn't comment on whether workers should join the UAW.

"I applaud the UAW for your flexibility and your new approaches to organizing workers, including embracing a new collaborative model of the works council, which has been highly successful in Germany, but it has not yet tried here in America," Perez told about 1,500 UAW workers and retirees at the UAW's annual political action conference earlier this

month. "I applaud your leadership in those issues because it is so indeed critically important as we move forward."

Earlier this month, King said on two separate occasions that two of President Barack Obama's key campaign advisers, David Plouffe and David Axlerod, individually told him that "without the UAW we would not have won this election, in the battleground states especially." The $85 billion auto bailout and Mitt Romney's opposition was a key issue in Ohio and other states.

Results of the vote will be announced Friday night.

- MSU student's killing rocks Saline
- Bob Corker: I'm 'Public Enemy No. 1' of the UAW
- Report: Lake Erie's water quality worsening, action needed

» Print

VW workers may block southern U.S. deals if no unions: labor chief

Wed, Feb 19 2014

BERLIN (Reuters) - Volkswagen's top labor representative threatened on Wednesday to try to block further investments by the German carmaker in the southern United States if its workers there are not unionized.

Workers at VW's factory in Chattanooga, Tennessee, last Friday voted against representation by the United Auto Workers union (UAW), rejecting efforts by VW representatives to set up a German-style works council at the plant.

German workers enjoy considerable influence over company decisions under the legally enshrined "co-determination" principle which is anathema to many politicians in the U.S. who see organized labor as a threat to profits and job growth.

Chattanooga is VW's only factory in the U.S. and one of the company's few in the world without a works council.

"I can imagine fairly well that another VW factory in the United States, provided that one more should still be set up there, does not necessarily have to be assigned to the south again," said Bernd Osterloh, head of VW's works council.

"If co-determination isn't guaranteed in the first place, we as workers will hardly be able to vote in favor" of potentially building another plant in the U.S. south, Osterloh, who is also on VW's supervisory board, said.

The 20-member panel - evenly split between labor and management - has to approve any decision on closing plants or building new ones.

Osterloh's comments were published on Wednesday in German newspaper Sueddeutsche Zeitung. A spokesman at the Wolfsburg-based works council confirmed the remarks.

"The conservatives stirred up massive, anti-union sentiments," Osterloh said. "It's possible that the conclusion will be drawn that this interference amounted to unfair labor praxis."

Republican U.S. Senator Bob Corker, a staunch opponent of unionization, said last Wednesday after the first day of voting that VW would award the factory another model if the UAW was rejected.

The comments even prompted U.S. President Barack Obama to intervene, accusing Republicans of trying to block the Chattanooga workforce's efforts.

Undeterred by last Friday's vote, VW's works council has said it will press on with efforts to set up labor representation at Chattanooga which builds the Passat sedan.

(Reporting by Andreas Cremer; Editing by Louise Ireland)

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VW counters U.S. senator, says new product not linked to union vote

Thu, Feb 13 2014

DETROIT, Feb 13 (Reuters) - German automaker Volkswagen AG , in a brief but bluntly worded statement Thursday, said a vote this week on union representation at its Chattanooga, Tennessee plant would have no bearing on whether it will build a new crossover vehicle there.

The statement counters U.S. Senator Bob Corker's announcement yesterday that he had been "assured" that if workers at the Chattanooga factory reject United Auto Worker representation, the company would reward the plant with a new product to build.

"There is no connection between our Chattanooga employees' decision about whether to be represented by a union and the decision about where to build a new product for the U.S. market," said Frank Fischer, CEO and chairman of Volkswagen Chattanooga in a statement early Thursday.

Corker, a Republican senator from Tennessee, made the assertion, which ran counter to previous public statements by VW, on the first of a three-day secret ballot election of blue-collar workers at the Chattanooga plant on whether to allow the UAW to represent them.

Corker has long been an opponent of the union, which he says hurts economic and job growth in Tennessee, a charge that UAW officials say is untrue.

"I've had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga," said Corker Wednesday, without saying with whom he held the conversations.

Exhibit D

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization.

UAW'S OPPOSITION TO THE MOTIONS TO INTERVENE OF MICHAEL BURTON, et al. and SOUTHERN MOMENTUM, et al.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (the "UAW") opposes the Motions to Intervene of Michael Burton, et al. (the "Burton Motion") and Southern Momentum, Inc. et al. (the "SMI Motion"). What follows are the UAW's arguments supporting this opposition.

I. Statement of the case

Volkswagen Group of America, Inc. ("VWGOA") filed an RM Petition on February 3, 2014, seeking an election in a unit of VWGOA's production and maintenance employees (the "Unit") at its facility in Chattanooga, Tennessee. A Stipulated Election Agreement (the "SAE") was approved on that date by NLRB Region 10. Pursuant to the SAE, Region 10 conducted an election on February 12, 13 and 14,

2014. The vote as tallied was 712-626 against representation by the UAW. On February 21, 2014, the UAW timely filed objections to conduct affecting the election (the "Objections") and asked the Board to set aside the election and order that a new election be held. On February 24, 2014, Michael Burton, et al. filed the Burton Motion. On February 28, 2014, Southern Momentum, Inc., a newly formed Tennessee corporation, and two employees filed the SMI Motion. The UAW opposes the Burton Motion and the SMI Motion (together, the "Motions") and submits that the requests for intervention by the movants (together the "Movants") must be denied.

II. The movants lack standing to intervene

§ 11194.4 of the NLRB Representation Casehandling Manual, Part Two ("Manual") sets forth the standards for motions to intervene:

> **11194.4 Tests for Granting or Denying Intervention.** Should the union seeking intervention meet any of the tests described in Secs. 11022, et seq., the motion for intervention should be granted.
>
> *Motions to intervene made by employees or employee committees not purporting to be labor organizations should be denied.* Motions to intervene made on the basis of interest in the unit by labor organizations representing employees in other parts of the plant, for example, or other plants of the employer, should be granted. Sec. 11023.5. At some subsequent point, however, such intervenor should be asked to make clear its position as to participation in any election ordered.
>
> A motion to intervene made by an organization that has been ordered disestablished by a final Board order should be denied. Objections to a motion to intervene based on an allegation that the union seeking intervention is illegally dominated or assisted should be rejected, in the absence of a Board order to such effect.

(emphasis supplied).

Thus, *under § 11194.4, an employee or a group of employees that does not purport to be a labor organization does not have standing to intervene.*

§ 102.65 of the NLRB Rules and Regulations provides:

> "Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding. The Regional Director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative *to such extent and upon such terms as he may deem proper*…"

(emphasis supplied).

§ 102.65 of the NLRB Rules and Regulations *does not* provide the standard for granting a motion to intervene. Instead, it sets forth only procedural guidelines for a party seeking leave to intervene, that is, the form that a request to intervene in a Board proceeding must take (i.e. a motion), and the information that must be included in the motion (i.e. a statement of interest). Beyond that, § 102.65 states no standard for the grant or denial of intervention, providing only that intervention may be "permit[ted]…to such extent and upon such terms as [the Regional Director or hearing officer] *deem[s] proper*." *Id.* (emphasis supplied). Nor does § 102.65 provide guidance for when a motion to intervene is to be "deem[ed] "proper."

§ 11194.4 of the Manual does provide such guidance. It provides that a motion to intervene is not proper when it is "made by an employee or employee committees not purporting to be labor organizations." *Id.* Thus, although Rule § 102.65(b) permits "any person" to move to intervene in a Board proceeding, *a motion to intervene made by an employee or a group of employees should only be granted if the employees themselves purport to*

be a statutory labor organization. And here, where neither of the Motions purport to be filed by or on behalf of a Section 2(5) labor organization, there are no grounds to grant leave to intervene. Accordingly, the Motions should be denied.

Consistent with the foregoing, both the Board and the federal courts have recognized that employees not purporting to be a labor organization and not a party to the election lack standing to intervene in post-election proceedings. For example, in *Clarence E. Clapp,* 279 NLRB 330 (1986), the Board held that an individual employee was not a "party," and thus could not file objections to an election. In *Clapp*¸ an election was held pursuant to a stipulated election agreement, resulting in a tie, and neither the union nor the employer filed objections. Following the election, an employee complained to the Board's Sub-regional office that he was unfairly denied the opportunity to vote. After investigating the allegations set forth in the employee's letter, the Acting Regional Director found that the employee was inappropriately disenfranchised and consequently recommended that the election be set aside. The employer excepted to the Acting Regional Director's recommendation, and the Board agreed, stating, "*The Board has long held that individual employees are not 'parties' …*" *Id.* at 330 (emphasis supplied). The Board accordingly certified the election results, holding that the employee's letter did not constitute a valid objection because the employee was "not a 'party' to this proceeding." *Id.* at 330-331. *See also Westinghouse Electric Corporations*, 78 NLRB 315, 316 n.2 (1948) (employee filed exceptions to the Regional Director's Report on Objections; Board holds the individual employee not a "party" entitled to file exceptions); *DHSC, LLC dba Medical Center*, 2013 WL 143371 * 1 (NLRB,

January 11, 2013) (Citing § 11194.4 of the Manual, the Regional Director denies employees' motion to intervene in election objections proceedings; Board affirms, holding, "The employees lack standing to file objections…"); *Ashley v. NLRB*, 255 Fed. Appx. 707, 709 (4th Cir. 2007) ("The typical parties to a representation proceeding are the employer and the union, and *the Board does not normally allow individual employees to intervene in representation proceedings* [citing § 11194.4 of the Manual]. It is unsurprising, then, that the Board denied Plaintiff's motion to intervene in the representation proceeding.") (emphasis supplied).

III. The movants allege violations of the NLRA that are appropriately the subject of unfair labor practice charges

The Motions must be dismissed for the further reason that they raise allegations that are appropriately the subject of unfair labor practice charges.

The Burton Motion argues that the movants "must be permitted to intervene because their employer and the UAW are colluding to force unionization onto them and their co-workers." Burton Motion at 1. This allegation includes the claim that the UAW and VWGOA entered into a "collusive 'Neutrality Agreement' to govern the unionization process." *Id*. at 3, that VWGOA agreed to provide "UAW's non-employee organizers with broad in-plant access and paid employees to attend UAW captive audience speeches" and that VWGOA agreed to "'align messages and communications with the UAW through the time of the election and the certification of the results by the NLRB'" *Id.* at 4, and that "Volkswagen and the UAW continue to collude with one another" in a manner violative of the NLRA. *Id.* Similarly, the SMI Motion claims that

due to the relationship between the UAW and VWGOA, "the Section 7 rights of the employees … could be completely ignored." SMI Motion at 6-7.

If the Movants believe that the conduct of either the UAW or VWGOA, or both, has violated the National Labor Relations Act, they are free to make such allegations in one or more unfair labor practice charges. And, if those charges are found to have merit, the Board is empowered by Section 10 of the NLRA to enter an appropriate remedial order. Thus, for example, if the Movants believe that VWGOA has provided unlawful assistance or support to the UAW, they may allege the same to the Board and provide evidence to support their contention. However, the proper mechanism for seeking redress of these alleged violations is not intervention in election objection proceedings.

In *Ashley v. NLRB*, 255 Fed. Appx. 707 (4th Cir. 2007), an identical issue to that here was presented to the Fourth Circuit Court of Appeals. When employees attempted to intervene in post-election proceedings because they claimed that the employer had unlawfully assisted the union in its organizing efforts, the Circuit Court held that the employees should have brought their claims via an unfair labor practice charge. *Id*. at 709.

The employees in *NLRB v. Ashley* sought to overturn a Board election based on alleged objectionable conduct by the employer. *Id.* at 708. Specifically, the employees claimed that one day prior to the election, the employer circulated a memorandum that implied that in the event of a union victory in the election, non-union employees would be subject to higher benefit costs than bargaining unit employees. *Id.* The employees

claimed that the employer's circulation of the memorandum constituted a "contribution of support" to the union and thus amounted to objectionable conduct. *Id*. at 709.

Following the election, the employees filed a motion to intervene and election objections with the Acting Regional Director, which were denied. *Id.* After unsuccessfully appealing the Acting Regional Director's denial of their motion to the Board, the employees sued the Board in federal court, "claiming that the Board's certification of UAW as their exclusive representative deprived them of protected liberty and property interests without due process of law, in violation of the Fifth Amendment." *Id.* at 708. The district court dismissed the employees' complaint for lack of standing and subject matter jurisdiction, and the dismissal was appealed to the 4th Circuit Court. *Id.*

The 4th Circuit held that "*[t]he typical parties to a representation proceeding are the employer and the union, and the Board does not normally allow individual employees to intervene in representation proceedings. See* NLRB Casehandling Manual, Part Two, Representation Proceedings § 11194.4 (2007) … It is unsurprising, then, that the Board denied Plaintiff's motion to intervene in the representation proceeding." *Id.* at 709 (citation in original, emphasis supplied). The Court went on to say that the employees' allegations of "support" by the employer to the union fell "within the definition of an unfair labor practice [… and] Plaintiffs could have filed an unfair labor practice charge with the Board." *Id.*[1]

[1] Exhibit A to this Opposition is the 4th Circuit's decision in *Ashley v. NLRB*, 255 Fed. Appx. 707 (4th Cir. 2007). The Board's brief in *Ashley* is attached as Exhibit B.

Like the Movants here, the employee-plaintiffs in *Ashley v. NLRB* based their motion to intervene on purported unlawful support by the employer. The 4th Circuit held that the employee plaintiffs in *Ashley v. NLRB* could have properly raised their allegations in an unfair labor practice charge, but noted their failure to do so. Here also, the Movants are free to allege VWGOA's unlawful support of the UAW in an unfair labor practice case, but they are precluded from intervening in this representation case.

At issue in the election objections case here is whether the allegations contained in the UAW's objections are true, and, if so, whether they affected the outcome of the election. These objections relate exclusively to allegations of third-party misconduct and whether that misconduct created an atmosphere of fear of reprisal rendering a free election impossible. *See Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). The objections do not touch on any aspects of the relationship between UAW and VW. The Movants' motions to intervene, and the allegations set forth therein, are not relevant to the issue that is the subject of the election objection proceedings. Instead, they relate to potential violations of NLRA §8(a)(2). As such, the Movants' claims may be appropriately raised in unfair labor practice proceedings, not the election objection proceedings in this case.

Moreover, election objection proceedings are not adversarial, they are investigatory, and in such cases the Board has an independent obligation to reach a result consistent with the Act. For example, in an objections case, Section 11424.3(b) of the Board's Casehandling Manual provides that "[t]he hearing officer is not an advocate of any position but must be impartial in his/her rulings and in conduct both on and off

the record. … The hearing officer should actively participate. As necessary, he/she should cross-examine, call and question witnesses, and call for and introduce appropriate documents." There is no reason that the Board, following its standard practices as upheld by the courts, cannot fully and fairly investigate and resolve the election objections here.[2]

IV. Cases cited by the Movants do not support intervention here

The Movants cite several older Board decisions, claiming they support intervention here. They do not.

For example, in *Belmont Radio Corporation*, 83 NLRB 45 (1949), cited by Movants, a group of employees filed a motion to intervene to file objections to the conduct of an election, "alleging that the Employer had engaged in certain conduct which affected the results of the election." *Id.* at 45. The employees were strikers who had cast ballots in the

[2] SMI argues that its conduct during the critical period has been called into question, and that it should be allowed to intervene to defend its conduct. Of course, what UAW alleges is that SMI – in a written press release – republished the threats made by State of Tennessee legislators and government leaders, specifically by stating that "[f]urther financial incentives — which are absolutely necessary for the expansion of the VW facility here in Chattanooga — simply will not exist if the UAW wins this election." See article quoting SMI spokesperson Maurice Nicely in USA Today, February 10, 2014, http://www.usatoday.com/story/money/cars/2014/02/10/vw-tennessee-uaw-vote-incentives/5368195/. (Similar testimony and subpoenaed documents will also be sought by the UAW from SMI and its agents and consultants concerning the republication of the Corker statements that are the subject of UAW's Objections.) The role of SMI and its agents and consultants, including its spokesperson Mr. Nicely, will simply be to testify and produce documents related to SMI's republication of and/or commentary on these matters, and activity related to it. The fact that testimony and production of documents may be required of a person or entity is not a basis for the intervention of such a person or entity in NLRB election objection proceedings. Moreover, neither SMI's nor Mr. Nicely's conduct (or comments) are alleged as unlawful under the NLRA – since neither are a statutory labor organization – so there is no cause for them to appear before the Board to defend their conduct.

election but were challenged because their names did not appear on the eligible voter list because they had been permanently replaced in their jobs. *Id.* The Board granted the employees' motion to intervene "but limited such intervention to matters directly concerned with the disposition of their challenged ballots." *Id;* fn. 3. Thus *the Board did not permit the employees to intervene for the purpose of challenging the conduct of the Employer, but instead only for the purpose of determining the validity of the challenged ballots of striking employees.* The reason the employees were allowed to intervene at all was because the employees themselves were economic strikers who had been permanently replaced and their ballots were challenged based on their employment status. The Board permitted the employees to intervene for the sole purpose of determining whether their ballots were validly excluded.

Similarly, in *Shoreline Enterprises of America*, 114 NLRB 716 (1955), employees were permitted to intervene "for the limited purpose of entering exceptions to that part of the Regional Director's report on objections which related to their nonparticipation in the election." *Id.* at fn.1. After the Regional Director overruled the employer's objections to an election in which the union prevailed, a group of four employees filed a motion to intervene and exceptions to the Regional Director's report. *Id*. at 717. The four employees were denied the right to vote in the election because they were classified as ineligible clerical employees. *Id.* at 719. In granting their motion to intervene, the Board noted "it is not the Board's usual practice to permit the intervention of individual employees who do not claim to represent any employees for the purpose of collective bargaining …" *Id.* at fn.1. However, the Board permitted the intervention for the

"limited purpose" relating to their nonparticipation in the election, because four votes were determinative. *Id.*[3]

V. Conclusion

The Movants do not have standing to intervene in the post-election proceedings of this case because they do not purport to be labor organizations and they were not parties to the election. Moreover, the reasons for intervention set forth in the Movants' Motions are not a proper basis for intervention here. The Board's election objections proceedings are non-adversarial, and the Board will have an independent obligation to determine whether there is a sufficient factual and legal basis for overturning the election here. The Motions should be denied.

Respectfully submitted,

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[3] Just as the Board in *Belmont Radio Corporation* narrowly permitted employees to intervene, in *Shoreline Enterprises of America* the Board also granted a motion to intervene for a strictly defined and limited purpose. The employees in *Shoreline Enterprises of America* had a direct interest in the Regional Director's dismissal of the employer's objections, because the employer objected to the employees' disenfranchisement. *Id.* at 719.

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Dated: March 6, 2014

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2014, I submitted the foregoing UAW Opposition to Motions to Intervene to the National Labor Relations Board by electronic filing and e-mailed a copy of same to:

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EXHIBIT A

255 Fed.Appx. 707
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fourth Circuit Rule 32.1 (Find CTA4 Rule 32.1)
United States Court of Appeals, Fourth Circuit.

Fred ASHLEY; Randy Fowler; Henry Juarez; Andrew Turner, Plaintiffs—Appellants,
v.
NATIONAL LABOR RELATIONS BOARD; Robert J. Battista, In his official capacity as Chairman of the National Labor Relations Board; Peter C. Schaumber, In his official capacity as a member of the National Labor Relations Board; Wilma B. Liebman, In her official capacity as a member of the National Labor Relations Board; Peter N. Kirsanow, In his official capacity as a member of the National Labor Relations Board; Dennis P. Walsh, In his official capacity as a member of the National Labor Relations Board; Willie L. Clark, Jr., In his official capacity as the Regional Director of the Eleventh Region of the National Labor Relations Board, Defendants–Appellees.

No. 06–2127. | Argued: Oct. 30, 2007. | Decided: Nov. 20, 2007.

Synopsis

Background: Employees brought action against National Labor Relations Board (NLRB), alleging that NLRB deprived them of their liberty and property interests without due process of law when it certified union as their exclusive bargaining representative without entertaining their objections during certification proceeding. The United States District Court for the Middle District of North Carolina, William L. Osteen, Senior District Judge, 454 F.Supp.2d 441, granted NLRB's motion to dismiss. Employees appealed.

Holding: The Court of Appeals held that employees failed to state due process claim.

Affirmed.

West Headnotes (1)

[1] Constitutional Law
Notice and hearing; proceedings and review
Labor and Employment
Operation and effect

Employees failed to state due process claim based upon failure of National Labor Relations Board (NLRB) to entertain their objections to union's certification as their exclusive bargaining representative during certification proceeding when employees failed to avail themselves of their right to file unfair labor practices charge in accordance with NLRB's administrative process. U.S.C.A. Const.Amend. 5; National Labor Relations Act, §§ 2(1), 3(d), 9(c), 10(a, f), 29 U.S.C.A. §§ 152(1), 153(d), 159(c), 160(a, f); 29 C.F.R. § 102.9.

2 Cases that cite this headnote

***707** Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:06–cv–00316–WLO–PT).

Attorneys and Law Firms

ARGUED: William L. Messenger, National Right to Work Legal Foundation, Springfield, Virginia, for Appellants. Kye D. Pawlenko, Office of the General Counsel, National Labor Relations Board, Washington, D.C., for Appellees. **ON BRIEF:** Philip M. Van Hoy, Stephen Dunn, Van Hoy, Reutlinger, Adams & Dunn, Charlotte, North Carolina, for Appellants. Ronald Meisburg, General Counsel, John E. Higgins, Jr., Deputy General Counsel, John H. Ferguson, Associate ***708** General Counsel, Margery E. Lieber, Deputy Associate General Counsel, Eric G. Moskowitz, Assistant General Counsel, National Labor Relations Board, Washington, D.C., for Appellees.

Before MICHAEL, MOTZ, and KING, Circuit Judges.

Opinion

Affirmed by unpublished PER CURIAM opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Plaintiffs Fred Ashley, Randy Fowler, Henry Juarez, and Andrew Turner (collectively, Plaintiffs) bring this action against the National Labor Relations Board (NLRB or Board). Plaintiffs allege that when the Board certified the International Union, United Automobile and Agricultural Implement Workers of America (UAW) as their exclusive bargaining representative without entertaining their objections during the certification proceeding, the Board deprived them of their liberty and property interests without due process of law, in violation of the Fifth Amendment. The district court granted the Board's motion to dismiss for lack of standing and subject matter jurisdiction. We affirm, albeit on somewhat different grounds.

I.

Plaintiffs are employees of Thomas Built Buses, Inc. (TBB). TBB has a relationship with UAW that the district court described as "interesting"—it appears that for some time, TBB has been assisting UAW in its organizing efforts at the TBB plant.

In June 2005, UAW requested that the NLRB conduct a certification election at the TBB plant, in which TBB employees would vote to determine whether UAW would become the exclusive representative of the TBB employees. One day prior to the election, TBB circulated a memorandum that implied that non-union employees would soon be subject to higher benefit costs. On the day of the election, UAW recirculated the original memorandum, with the addition of the headline "DID YOU SEE THIS? THE COST OF BEING *NON*–UNION JUST WENT UP!" After the election, the unofficial tally was 714 in favor of UAW and 504 opposed.

Plaintiffs argue that TBB's circulation of the benefits change memorandum one day prior to the election constitutes objectionable conduct and provides grounds for setting aside the election results. After the election, Plaintiffs sought to intervene in the representation proceeding before the NLRB through which the Board would officially certify UAW as the representative of the TBB employees. Plaintiffs also filed objections to the certification with the NLRB's Regional Director. But Plaintiffs did not file a charge alleging that TBB or UAW engaged in unfair labor practices. The NLRB denied Plaintiffs's motion to intervene, refused to consider the objections filed with the Regional Director, and certified UAW as the exclusive bargaining representative of TBB.

Instead of filing an unfair labor practices charge against TBB and/or UAW, Plaintiffs brought this action against the NLRB, claiming that the Board's certification of UAW as their exclusive representative deprived them of protected liberty and property interests without due process of law, in violation of the Fifth Amendment. The district court granted the Board's motion to dismiss, finding a lack of standing and no subject matter jurisdiction. Plaintiffs appeal.

II.

The National Labor Relations Act (NLRA, or Act) empowers the Board to investigate questions of representation and, where necessary, to direct elections ***709** by secret ballot and to certify the results of such elections. 29 U.S.C.A. § 159(c) (West 1998 & Supp.2007). The typical parties to a representation proceeding are the employer and the union, and the Board does not normally allow individual employees to intervene in representation proceedings. *See* NLRB, Casehandling Manual, Part Two, Representation Proceedings § 11194.4 (2007), *available at* http://www.nlrb. gov/Publications/Manuals. It is unsurprising, then, that the Board denied Plaintiffs's motion to intervene in the representation proceeding.

The NLRA also empowers the Board to prevent any person or entity from engaging in any unfair labor practice affecting commerce. 29 U.S.C.A. §§ 152(1), 160(a). An employer's contribution of support to a labor organization constitutes an unfair labor practice within the meaning of the Act. *Id.* at § 158(a)(2); *see also ILGWU v. NLRB,* 366 U.S. 731, 738, 81 S.Ct. 1603, 6 L.Ed.2d 762 (1961). Thus, in this case, if TBB's circulation of the benefits change memorandum constitutes a "contribution of support" to UAW, then TBB's actions fall within the definition of an unfair labor practice.

Moreover, "any person," not just an employer or union, may file a charge alleging that a person or entity has engaged in unfair labor practices. 29 C.F.R. § 102.9. The

General Counsel of the Board has the final authority to decide whether to pursue the investigation of a charge and initiate the adjudication of a complaint under section 160 of the Act, 29 U.S.C.A. § 153(d); *see also NLRB v. United Food & Commercial Workers,* 484 U.S. 112, 108 S.Ct. 413, 98 L.Ed.2d 429 (1987). The Board adjudicates the merits of unfair labor practice charges brought by the General Counsel. 29 U.S.C.A. § 160(b)–(d). If the Board finds that an employer or union has committed an unfair labor practice, it may issue a final order setting aside its previous certification of a union. *See Lunardi–Central Distributing Co.,* 161 NLRB 1443 at 1444–45 (1966). Any party to a Board proceeding aggrieved by this final order may obtain review of the order in the courts of appeals. 29 U.S.C.A. § 160(f).

Therefore, in the case at hand, Plaintiffs could have filed an unfair labor practices charge with the Board. If the General Counsel initiated the adjudication of charges, the Board could have held that TBB or UAW committed unfair labor practices and set aside its previous certification of UAW as the exclusive representative of the TBB employees. Alternatively, if the Board held that no unfair labor practice had been committed, the Plaintiffs could have appealed the Board's final decision to this court.

Plaintiffs, however, chose not to file an unfair labor practices charge with the Board. Instead, Plaintiffs ask us to declare that the process that the NLRA establishes to address unfair labor practices violates their constitutional rights, despite the fact that they failed to pursue this process. As our sister courts have repeatedly held, a plaintiff may not bypass a seemingly adequate administrative process and then complain of that process's constitutional inadequacy in federal court. *See, e.g., Farhat v. Jopke,* 370 F.3d 580, 596 (6th Cir.2004); *Santana v. City of Tulsa,* 359 F.3d 1241, 1244 (10th Cir.2004); *Krentz v. Robertson,* 228 F.3d 897, 904 (8th Cir.2000); *Alvin v. Suzuki,* 227 F.3d 107, 116 (3d Cir.2000); *Cotton v. Jackson,* 216 F.3d 1328, 1331 (11th Cir.2000); *Rathjen v. Litchfield,* 878 F.2d 836, 840 (5th Cir.1989); *Dusanek v. Hannon,* 677 F.2d 538, 543 (7th Cir.1982).[1]

***710** Even assuming that Plaintiffs have suffered the deprivation of a constitutionally protected liberty or property interest, which is not at all clear, their failure to avail themselves of their right to file an unfair labor practices charge means that they have failed to state a due process claim. As Judge Becker explained in *Alvin,* "to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate." 227 F.3d at 116. This is so because a due process violation "is not complete" when the asserted deprivation occurs; rather it is only complete when the government "fails to provide due process." *Zinermon v. Burch,* 494 U.S. 113, 126, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Accordingly, where "there is a process on the books that appears to provide due process, the plaintiff cannot skip that process and use the federal courts as a means to get back what he wants." *Alvin,* 227 F.3d at 116. As in *Alvin,* here "a procedural due process violation cannot have occurred" because "the governmental actor provides apparently adequate procedural remedies and the plaintiff has not availed himself of those remedies." *Id.* (citing *Zinermon,* 494 U.S. at 126, 110 S.Ct. 975).[2]

III.

Because Plaintiffs did not file an unfair labor practices charge complaining of TBB's unlawful assistance to UAW, they have failed to state a due process claim. Accordingly, the judgment of the district court dismissing this action is

AFFIRMED.

Parallel Citations

2007 WL 4115948 (C.A.4 (N.C.)), 183 L.R.R.M. (BNA) 2097, 155 Lab.Cas. P 10,937

Footnotes

1 Some of these cases deal with state, rather than administrative, procedures; however, the principle that a plaintiff may not complain of procedures he or she has not pursued is the same.

2 *Mathews v. Eldridge,* 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), on which Plaintiffs heavily rely, involves an entirely different statutory scheme, not governing asserted employment rights, but entitlement to social security benefits. Eldridge "raised at least a colorable claim that because of his physical condition and dependency upon the disability benefits," a pre-termination evidentiary hearing not permitted by administrative procedures was constitutionally required. *Id.* at 331, 96 S.Ct. 893. Despite

Eldridge's failure to avail himself of other administrative remedies, these particular allegations permitted him to bring this due process claim in federal court. Plaintiffs make no remotely similar allegations here.

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EXHIBIT B

2007 WL 737420 (C.A.4) (Appellate Brief)
United States Court of Appeals, Fourth Circuit.

Fred ASHLEY, et al., Appellants,
v.
NATIONAL LABOR RELATIONS BOARD, et al., Appellees.

No. 06-2127.
February 23, 2007.

On Appeal from the United States District Court for the Middle District of North Carolina

Brief for Appellees National Labor Relations Board, et al

Eric G. Moskowitz, Assistant General Counsel, Kye D. Pawlenko Attorney, Ronald Meisburg National Labor Relations Board, Genera Counsel 1099 14th Street, NW, Washington, DC 20570, (202) 273-2930, Deputy General Counsel.

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STATEMENT OF JURISDICTION

Case No. 06-2127 is before the Court on the Notice of Appeal filed by plaintiffs Fred Ashley, Randy Fowler, Henry Juarez, and Andrew Turner ("Appellants") to review an Order and Judgment of the United States District Court for the Middle District of North Carolina, entered September 25, 2006, dismissing Appellants' Complaint for lack of standing and subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. (JA 4849.)[1] This Court has appellate jurisdiction to review the district court's Order and Judgment pursuant to 28 U.S.C. § 1291. The Notice of Appeal was filed on October 17, 2006. (JA 50-52.) It is timely under Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure.

For the reasons explained below, the district court properly dismissed the Complaint because Appellants lack standing and the district court lacks subject matter jurisdiction over the Complaint.

STATEMENT OF ISSUES PRESENTED

(1) Whether Appellants have standing to plead a denial of procedural due process despite having elected not to avail

themselves of the procedural protection provided to them.

(2) Whether the district court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 to review an administrative agency decision that Congress intended to be unreviewable.

STATEMENT OF THE CASE

Appellants are employees of Thomas Built Buses, Inc. ("TBB") who allege that their Fifth Amendment procedural due process rights were violated when the National Labor Relations Board ("Board" or "NLRB") certified the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") as Appellants' exclusive bargaining representative and decided not to entertain their objections to employer conduct that they allege tainted the election. (Compl. ¶¶ 66-70, JA 25-26.)

The Board is an independent federal regulatory agency that administers the National Labor Relations Act, 29 U.S.C. §§ 151-169 ("Act" or "NLRA"). The Board primarily performs two statutory functions: it conducts union representation elections pursuant to Section 9 of the Act, 29 U.S.C. § 159, and it investigates and prosecutes unfair labor practices pursuant to Sections 8 and 10 of the Act, 29 U.S.C. §§ 158, 160. This case arises out of the Board's exercise of its Section 9 powers.

Appellants filed suit in the United States District Court for the Middle District of North Carolina on April 6, 2006. (JA 5.) On June 22, 2006, the Board moved to dismiss the action pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. (JA 29-31.) The district court granted the Board's motion on September 25, 2006, and dismissed the action for lack of standing and subject matter jurisdiction. (JA 48-49.) Appellants appealed the dismissal on October 17, 2006. (JA 50-52.)

STATEMENT OF FACTS

On June 13, 2005, the UAW filed a petition with the Board requesting that the Board conduct a representation election at TBB's manufacturing plant in High Point, North Carolina to determine if a majority of TBB's production and maintenance employees desired to be represented by the UAW. (Compl. ¶ 43, JA 19.) The Board conducted an election on June 29, 2005. (Compl. ¶ 49, JA 20.) A tally of the ballots revealed that 714 employees voted for UAW representation and 504 employees voted against UAW representation. (Compl. ¶ 49, JA 20.) On July 5, 2005, Appellants filed a motion with the Board seeking to intervene in the representation proceeding for the purpose of filing proffered objections to pre-election employer conduct that they believe affected the results of the election. (Compl. ¶ 53, JA 21.) Appellants also filed proffered election objections alleging that the pre-election conduct warranted setting aside the results of the election. (Compl. ¶ 54, JA 21.)

The pre-election conduct to which Appellants objected was TBB's act of posting a "2005 Benefits Changes" memorandum one day before the election which announced that on September 1, 2005, Freightliner LLC[2] would "implement cost sharing provisions in the medical benefit plans." (Compl. ¶ 46, JA 20.) According to Appellants, because the memorandum stated that the future changes in corporate-wide medical benefits were applicable only to "non-represented employees," the memorandum implied that employee health care costs would increase significantly unless TBB's employees voted for UAW representation. (Compl. ¶ 47, JA 20.) Thus, based on Appellants' "information and belief," Appellants sought to complain to the Board that TBB's pre-election conduct "interfere[d] with employee free choice" and that this interference "had a significant effect on the outcome of the election." (Compl. ¶¶ 50-51, JA 20-21.)

On July 8, 2005, an Acting Regional Director of the Board issued an order which denied Appellants' motion to intervene in the representation proceeding and refused to consider their proffered election objections. (Compl. ¶¶ 56-57, JA 22.)[3] The Regional Director then certified the UAW as Appellants' exclusive bargaining representative. (Compl. ¶ 58, JA 22.) Thereafter, on July 19, 2005, Appellants filed with the Board an administrative appeal of the Acting Regional Director's order denying their motion to intervene in the representation proceeding. (Compl. ¶ 59, JA 22.) That appeal was denied by the Chairman and two other members of the Board on November 10, 2005. (Compl. ¶ 61, JA 23.)[4]

SUMMARY OF ARGUMENT

Appellants lack standing to plead a denial of procedural due process because they elected not to avail themselves of the procedural protection provided to them. They complain that the certification of the UAW was "erroneous" because TBB wrongfully interfered with employee free choice. Yet, for whatever reason, they chose to bypass the procedure that Congress specifically designed to safeguard employee free choice from employer interference. Had Appellants filed an unfair labor practice charge with the Board, they would have had a meaningful opportunity to have the Board consider their concerns about TBB's alleged improper pre-election conduct. Now, having opted to ignore that procedural protection, they cannot create a procedural due process claim by arguing that the Board's unfair labor practice process *would have been* constitutionally inadequate had they invoked it. Indeed, they cannot show that they were injured by the alleged inadequacy of any hypothetical result that they predict would have occurred if they had filed an unfair labor practice charge. In any event, their attempts to show that the Board's unfair labor practice process would have been inadequate are unpersuasive.

Furthermore, even aside from Appellants' lack of standing, the district court lacks subject matter jurisdiction to review the Board's decision not to entertain Appellants' election objections. Whether jurisdiction lies under 28 U.S.C. § 1331 depends entirely on congressional intent and it is beyond dispute that Congress intended for such Board decisions in union certification matters to be unreviewable. At bottom, Appellants' seek district court review of the Board's decision not to entertain their election objections. Appellants are attempting to circumvent the judicial review procedures prescribed by Congress by packaging their claim as "arising under" the Constitution. However, even in those circuits which have assumed that district courts could have jurisdiction over true constitutional claims, there would be no district court jurisdiction in this case because Appellants had other means available under the NLRA to protect their choice for or against union representation from employer interference and because they have failed to show, as they must, a plain violation of a clear constitutional right.

ARGUMENT

I.

APPELLANTS LACK STANDING TO PLEAD A DENIAL OF PROCEDURAL DUE PROCESS BECAUSE THEY ELECTED NOT TO AVAIL THEMSELVES OF THE PROCEDURAL PROTECTION PROVIDED TO THEM

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law."* *Zinermon v. Burch,* 494 U.S. 113, 125 (1990) (italics in original). Accordingly, there can be *no* procedural due process violation "unless and until the State fails to provide due process." *Id.* at 126. In determining whether the government has failed to provide due process, "courts must consult the entire panoply of predeprivation and postdeprivation process provided by the state." *Fields v. Durham,* 909 F.2d 94, 97 (4th Cir. 1990) (citing *Zinermon).* "If there is a process on the books that appears to provide due process, the plaintiff cannot skip that process and use the federal courts as a means to get back what he wants." *Alvin v. Suzuki,* 227 F.3d 107, 116 (3d Cir. 2000). In short, "[a] party cannot create a due process claim by ignoring established procedures." *Santana v. City of Tulsa,* 359 F.3d 1241, 1244 (10th Cir. 2004).

It is, therefore, a basic tenet of procedural due process law that "a state cannot be held to have violated due process requirements when it has made procedural protection available and the plaintiff has simply refused to avail himself of them." *Dusanek v. Hannon* 677 F.2d 538, 543 (7th Cir. 1982).[5] "Because the procedural protections existed, the state cannot be accused of withholding them ...." *Id.* Indeed, this Court has repeatedly stated that when the government grants a plaintiff an opportunity to be heard and he chooses not to exercise that opportunity, "that complainant cannot later plead a denial of procedural due process." *Fuller v. Laurens County Sch. Dist.* No. 56, 563 F.2d 137, 140 (4th Cir. 1977), quoting *Satterfield v. Edenton-Chowan Bd. of Educ.,* 530 F.2d 567, 572 (4th Cir. 1975). This Court recently reaffirmed this principle in *Tri-County Paving, Inc. v. Ashe County,* 281 F.3d 430 (4th Cir. 2002), holding that the plaintiff "cannot complain now that the state did not provide adequate procedures" because he failed to exercise the procedures available to him. *Id.* at 438.

These cases express the fundamental principle that a plaintiff who fails to invoke the procedures provided to him cannot show that he was injured by the alleged inadequacy of those procedures. *See Shavitz v. City of High Point,* 270 F. Supp. 2d

702, 709-11 (M.D.N.C. 2003); *Van Harken v. City of Chicago,* 906 F. Supp. 1182, 1187 & n.5 (N.D. Ill. 1995).[6] By definition, there can be no concrete and particularized injury in fact traceable to government procedures that existed but were never invoked, and thus there can be no standing under Article III of the Constitution to allege that those procedures are constitutionally inadequate. *See* U.S. Const. art. III, § 2; *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992); *S. Blasting Servs., Inc. v. Wilkes County,* 288 F.3d 584, 595 (4th Cir. 2002).

In this case, the crux of Appellants' Complaint is that the Board's certification of the UAW was "erroneous" because TBB's pre-election conduct "interfere[d] with employee free choice" and this interference "had a significant effect on the outcome of the election." (Compl. ¶¶ 50-51, JA 20-21.)[7] Yet, Appellants could have invoked the Board's unfair labor practice process to test the lawfulness of TBB's pre-election conduct that was the subject of their proffered representation election objections. Indeed, Congress prescribed the Board's unfair labor practice process to protect employees from employer interference when deciding whether or not to bargain collectively. Appellants' statutory right "to form, join, or assist labor organizations" and "to refrain from... such activities" is embodied in Section 7 of the Act. 29 U.S.C. § 157. To protect those rights, Congress enacted a network of prohibitions on employer and union conduct in Section 8 of the Act. 29 U.S.C. § 158. Congress specifically designed Section 8(a)(1) for the precise purpose of protecting employee free choice from employer interference such as Appellants allege happened here. *See, e.g., NLRB v. Exch. Parts Co.,* 375 U.S. 405, 409 (1964) ("The broad purpose of § 8(a)(1) is to establish 'the right of employees to organize for mutual aid without employer interference' ") (citation omitted). And, to the extent that Appellants allege that TBB unlawfully assisted the UAW, Congress provided additional protection in Section 8(a)(2). *See, e.g., ILGWU v. NLRB,* 366 U.S. 731, 738 (1961) ("Section 8(a)(2) of the Act makes it an unfair labor practice for an employer to 'contribute ... support' to a labor organization"). Accordingly, Appellants could have filed an unfair labor practice charge alleging that TBB's conduct violated Section 8(a)( ) and/or Section 8(a)(2).[8] They simply elected not to avail themselves of this procedural protection.

That Appellants knew how to file a charge and that the Board's General Counsel would have seriously considered any allegation that TBB violated the NLRA is underscored by the fact that counsel for Appellants previously filed a charge on behalf of a TBB employee alleging that TBB unlawfully assisted the UAW, and the General Counsel issued an administrative complaint against TBB. (Compl. ¶¶ 39-40, JA 18-19.) Prosecution of that complaint was only halted pursuant to a settlement agreement whereby TBB withdrew recognition of the UAW as bargaining representative. (Compl. ¶¶ 41-42, JA 19.) While Appellants complain that they are entitled to additional procedures, the Board's unfair labor practice process is what Congress provided to employees and is the process that was available to Appellants to claim that their Section 7 rights to refrain from bargaining collectively was interfered with by employer misconduct.

Appellants' argument (Br. 36-37)-that the availability of Board process separate from the representation proceeding has no bearing on their due process claim-is contrary to controlling law. It is settled in this Circuit that the Court looks at the *entire panoply* of government process in determining whether procedural due process rights were violated. *See Tri-County Paving,* 281 F.3d at 436; *Fields,* 909 F.2d at 97. Thus, in *Tri-County Paving,* this Court held that a plaintiff who was denied a building permit by the county inspector's office could not make out a procedural due process claim because other avenues external to the permitting process were available to challenge the lawfulness of withholding the permit. 281 F.3d at 438. Likewise, under the entire panoply of Board process, Appellants had other avenues available to them to challenge TBB's conduct which they assert interfered with their free choice in the election. It is of no matter that Congress chose to codify that procedural protection in Sections 8 and 10 of the Act, which deal with unfair labor practices, but not in Section 9, which deals with representatives and elections.

Appellants cannot now argue that their failure to invoke the Board's unfair labor practice process is excusable because that process assertedly *would have been* constitutionally inadequate had they invoked it. (Br. 32-43.) Appellants are effectively seeking an advisory opinion based on hypothetical facts in contravention of Article III of the Constitution. *See, e.g., Ashcroft v. Mattis,* 431 U.S. 171, 172 (1977) (holding that "the hypothetical question whether the defendants *would have been* liable ..." called for an advisory opinion prohibited by Article III) (emphasis added). Regardless of whether Appellants were "injured" by the certification of the UAW as they assert (Br. 20-24), the fact remains that Appellants cannot show, as they must, that their alleged injury is traceable to the Board's processes.[9] Standing requires not only that the plaintiff have suffered an injury in fact, but also "that the injury is fairly traceable to the challenged action of the defendant." *S. Blasting Servs.,* 288 F.3d at 595. As Appellants themselves argue, the "challenged action" here is the sufficiency of the procedural protections to guard against "erroneous" certifications. (Br. 21.) Appellants lack standing because, having elected to forego the procedural protection provided to them, they cannot show that their injury is traceable to the Board's processes. *See Shavitz,* 270 F.

Supp. 2d at 710 ("Mr. Shavitz 'cannot trace any deprivation or threatened deprivation of property to any of the adjudicative procedures... that he questions because he never made use of them' ") (quoting *Walter v. City of Chicago,* 1992 WL 88457, at *3 (N.D. Ill. 1992)).[10]

In any event, Appellants' attempts to show that the Board's unfair labor practice process would have been constitutionally inadequate, had it been invoked, are unpersuasive.

Appellants argue that the filing of an unfair labor practice charge would have been inadequate here because the General Counsel could have refused to issue an administrative complaint and, if he were to do so, Appellants would not have been able to obtain judicial review. (Br. 37-39.) I While true, that fact is immaterial. Irrespective of whether a complaint would have issued, the filing of a charge would have given Appellants a meaningful opportunity to be heard on the merits of their allegation of employer misconduct by the Regional Director, and a further opportunity to be heard by the General Counsel's Office of Appeals if the Regional Director found no merit to the charge. *See* 29 C.F.R. §102.19(a). As Appellants themselves acknowledge (Br. 42-43), procedural due process requires only a meaningful opportunity to be heard; it "does not require certain results ...." *Tri-County Paving,* 281 F.3d at 436. Thus, contrary to Appellants' argument (Br. 37-39), the Board's unfair labor practice process is not constitutionally inadequate solely because Appellants had no guarantee of a favorable result before the General Counsel or the Board.[11]

Moreover, assuming Appellants' factual allegation in the Complaint (Compl. ¶¶ 50-51, JA 20-21) was supported by evidence that TBB's conduct did in fact interfere with employee free choice, the filing of an unfair labor practice charge would likely have resulted in the General Counsel issuing complaint, the Board finding that TBB violated the Act, and the Board remedying that violation. Appellants essentially concede as much by citing to Board unfair labor practice cases finding that such employer interference violates Section 8(a)(1). (Br. 9 n.7; 28 n.11.) And, if the Board's remedy in such a case would not have redressed Appellants' concerns to their satisfaction, Appellants could have obtained judicial review in this Court and argued that the Board's remedy is inadequate. *See* 29 U.S.C. § 160(f); *Local 282, IBT v. NLRB,* 339 F.2d 795, 799 (2d Cir. 1964) ("when the case has been carried to a decision on the merits by the Board, the charging party has standing as a 'person aggrieved' under § 10(f) to seek review of an order granting inadequate relief or denying it altogether").[12]

There is also no merit to Appellants' argument that the Board's unfair labor practice process would have been inadequate because "collaterally attacking the Board's certification order with unfair labor practice charges is, at best, a postdeprivation procedure." (Br. 40.) Appellants' alleged "deprivation" was the certification of the UAW. (Compl. ¶ 63, JA 23-24.) Had Appellants chosen to file an unfair labor practice charge at the same time they filed their motion to intervene and proffered their election objections, they would have at least had an opportunity to be heard by the Regional Director responsible for deciding whether or not to certify the UAW before the certification order issued. Moreover, to the extent that Congress permitted challenges to certifications at all, it specifically intended for such challenges to be channeled through the Board's unfair labor practice process after the conclusion of the representation proceeding. *See Boire v. Greyhound Corp.,* 376 U.S. 473, 476-78 (1964); *AFL v. NLRB,* 308 U.S. 401,411-12(1940). In any event, this Court has made clear that the government cannot be held to have failed to provide procedural due process when it makes postdeprivation process available and the plaintiff elects not to avail himself of that process. *See Tri-County Paving,* 281 F.3d at 437-38.

Nor is there merit to Appellants' argument that the Board's unfair labor practice process would have been inadequate because Appellants assertedly would have been precluded from "relitigating" the lawfulness of TBB's conduct that they allege resulted in an "erroneous" certification. (Br. 34-36.) The no-relitigation rule would not have applied to Appellants; it is applicable to the "parties" to the election-the employer and the union. *See* 29 C.F.R. § 102.67(f) ("Failure to request review shall preclude *such parties* from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding") (emphasis added); *St. Francis Hosp.,* 271 N.L.R.B. 948, 949 (1984) (Section 102.67(f)'s "prohibition against relitigation of representation issues ... applies to the *parties-the* employer and the union ...") (italics in original). Appellants were not a party to the representation proceeding and were not permitted to raise the merits of the lawfulness of TBB's conduct in that proceeding. Indeed, that is the heart of Appellants' complaint in this litigation. Therefore, the no-relitigation rule would have had no application to them had they chosen to file an unfair labor practice charge.[13]

II.

THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1331 TO REVIEW THE BOARD'S DECISION NOT TO ENTERTAIN APPELLANTS' ELECTION OBJECTIONS

A. *Congress Precluded Section 1331 Jurisdiction Over Board Decisions Made in Union Certification Proceedings*

"It is a fundamental precept of our constitutional structure that Congress may, in its discretion, grant, withhold, or otherwise limit the jurisdiction of the lower federal courts." *Wade v. Blue,* 369 F.3d 407, 410 (4th Cir. 2004). When Congress elects to withhold jurisdiction from the federal district courts, they are divested of federal-question jurisdiction under 28 U.S.C. § 1331 because "[a] general statute does not confer jurisdiction when an applicable regulatory statute precludes it." *Bd. of Trs. of Mem'l Hosp. v. NLRB,* 523 F.2d 845, 846 (10th Cir. 1975); *accord Int'l Sci. & Tech. Inst., Inc. v. Inacom Communications, Inc.,* 106 F.3d 1146, 1154 (4th Cir. 1997) ("§ 1331 is a *general* federal-question statute, which gives the district courts original jurisdiction unless a specific statute assigns jurisdiction elsewhere") (italics in original). "By virtue of such a specific reference or assignment, Congress negates district court jurisdiction under § 1331." *ErieNet, Inc. v. Velocity Net, Inc.,* 156 F.3d 513, 519 (3d Cir. 1998).

The same principles apply to district court suits to review acts of certain administrative agencies. "The courts uniformly hold that statutory review in the agency's specially designated forum prevails over general federal question jurisdiction in the district courts." *Media Access Project v. FCC,* 883 F.2d 1063, 1067 (D.C. Cir. 1989). "A contrary holding would encourage circumvention of Congress's particular jurisdictional assignment" and "would also result in fractured judicial review of agency decisions, with all of its attendant confusion, delay, and expense." *Owner-Operators Indep. Drivers Ass'n of Am., Inc. v. Skinner,* 931 F.2d 582, 589 (9th Cir. 1991).

It is beyond dispute that Congress intended for Board decisions in union certification proceedings to be unreviewable unless "they become the subject of a final NLRB order disposing of an unfair labor practice charge." *Perdue Farms, Inc. v. NLRB,* 108 F.3d 519, 521 (4th Cir. 1997). "The pertinent statutory language, legislative history and judicial decisions lead to the inescapable conclusion that Congress did not intend to permit immediate judicial review of Board decisions in union certification matters." *Greensboro Hosiery Mills, Inc. v. Johnston,* 377 F.2d 28, 29-30 (4th Cir. 1967). "[E]ven when judicial review is permitted by the statute subsequent to certification and the Board's finding of unfair labor practices, Congress decided to deliberately bypass the federal district courts." *Id.* at 30. "This reflects a conscious policy judgment by Congress that the benefits of more immediate review are outweighed by the likelihood that the delays resulting from such review would frustrate the purposes of the NLRA." *Perdue Farms,* 108 F.3d at 521. Accordingly, this Court has expressly acknowledged that federal district courts lack Section 1331 jurisdiction to review decisions of the Board. *Inacom Communications,* 106 F.3d at 1155; *see also ErieNet,* 156 F.3d at 519 (same).[14]

Appellants assert that the district court has jurisdiction here pursuant to Section 1331 because they have alleged that the Board, in deciding not to entertain their election objections, violated their Fifth Amendment rights, and thus their claim "arises under" the Constitution within the meaning of Section 1331. (Br. 43-44.) Appellants are simply packaging their claim as "arising under" the Constitution in an attempt to circumvent the normal rule of no district court review of Board decisions in union certification matters. Yet, this Court has explained that "the district courts have only that jurisdiction that Congress grants through statute" and that the term "arising under" in Section 1331 "is narrower than the similarly defined constitutional power" articulated in Article III of the Constitution. *Inacom Communications,* 106 F.3d at 1153. "Because federal-question jurisdiction ultimately depends on an act of Congress, the scope of the district courts' jurisdiction depends on that congressional intent manifested in statute." *Id.* at 1153-54.

It is clear that Congress intended to preclude district court jurisdiction in the precise circumstances of this case. In the 1947 amendments to the NLRA, Congress specifically considered and rejected a proposed amendment that would have allowed employees to obtain direct review of union certifications. *See* H.R. Conf. Rep. No. 80-510, at 56-57 (1947). Indeed, this Court has specifically observed that "when Congress undertook to re-evaluate the effects of its labor policy, it elected to continue the limitations upon judicial review" and "rejected a House amendment which would have permitted any interested person to obtain review immediately after certification." *Greensboro Hosiery Mills,* 377 F.2d at 31. This Court also noted that "Senator Taft, sponsor of the major amendments to the nation's labor law, remarked that 'such provision would permit dilatory tactics in representation proceedings.' " *Id.* (quoting 93 Cong. Rec. 6444). Thus, it would be "exactly contrary to the conclusion of Congress" to reverse the district court's decision below and permit Appellants to obtain direct judicial review of the Board's decision not to entertain their election objections simply by labeling their claim as "arising under" the

Constitution. *Hughes v. Getreu,* 266 F. Supp. 15, 18 (S.D. Ohio 1967).[15]

Here, Appellants' claim at bottom is a claim for direct district court review of the Board's decision not to entertain their election objections. Accordingly, Appellants should not be permitted to bypass the limitations on judicial review prescribed by Congress. The cases Appellants rely on are clearly distinguishable and provide them no support. (Br. 44-45.) For example, in *Duke Power Co. v. Carolina Environmental Study Group, Inc.,* 438 U.S. 59 (1978), the Supreme Court held that the federal district court had subject matter jurisdiction under Section 1331 to entertain a due process claim against the Nuclear Regulatory Commission challenging a certain provision of the Price-Anderson Act, 42 U.S.C. § 2210. However, Congress had not precluded direct review or assigned jurisdiction to another forum in the Price-Anderson Act like it has in the NLRA. Similarly, no federal statute divested the district court of jurisdiction in *Bell v. Hood,* 327 U.S. 678 (1946), *United States v. Minor,* 228 F.3d 352 (4th Cir. 2000), or in *Hodges v. Shalala,* 121 F. Supp. 2d 854 (D.S.C. 2000). Thus, "[i]n view of the language of the [NLRA], the clear and unambiguous congressional policy behind it and the teachings of the Supreme Court,... the district court was without jurisdiction to entertain this suit ...." *Greensboro Hosiery Mills,* 377 F.2d at 32.

B. *Appellants had Other Statutory Means Available to Protect Their Choice From Employer Interference and Have Failed to Show, as They Must, a Plain Violation of a Clear Constitutional Right*

Appellants' reliance on cases suggesting that district courts could have jurisdiction in circumstances where the Board has violated a constitutional right is misplaced. (Br. 46-47.) The premise for Appellants' argument is derived from dictum from the Second Circuit's half-a-century-old decision in *Fay v. Douds,* 172 F.2d 720 (2d Cir. 1949), stating that a district court could have jurisdiction over an alleged constitutional violation not "transparently frivolous." *Id.* at 723. The Supreme Court has never recognized such an exception and this dictum in *Fay* has been questioned by nearly every circuit that has had occasion to weigh-in on the issue, including the Second Circuit[16] Indeed, this Court "previously considered Fay v. Douds and found it unpersuasive." *J.P. Stevens Employees Educ. Comm. v. NLRB,* 582 F.2d 326, 329 (4th Cir. 1978) (citing *Greensboro Hosiery Mills,* 377 F.2d at 32). Specifically, this Court found *Fay* to be unpersuasive in circumstances where "[t]here was no *plain* violation of a *clear* constitutional or statutory limitation upon the conduct of the Board ...." *Greensboro Hosiery Mills,* 377 F.2d at 32 (emphasis added).

But even in those circuits which have assumed that district courts could have jurisdiction over constitutional claims arising from representation proceedings, there would be no subject matter jurisdiction here. In those circuits, constitutional claims are analyzed under the two-prong *Leedom v. Kyne* jurisdictional test applicable to allegations that the Board has violated the NLRA. *See Squillacote v. IBT,* Local 344, 561 F.2d 31, 39 (7th Cir. 1977); *McCulloch v. Libbey-Owens-Ford Glass Co.,* 403 F.2d 916, 917 (D.C. Cir. 1968). Under that framework, district court jurisdiction will lie only if (i) the plaintiff demonstrates a *plain* violation of a *clear* constitutional right *and* (ii) there are *no* other means available to protect that right. *Leedom,* 358 U.S. at 190. Even assuming Appellants could satisfy the first prong, a point we dispute below, there would be no jurisdiction here because, as discussed above, the Board's unfair labor practice process prescribed by Congress was available to remedy the alleged employer misconduct.[17] Thus, the absence of federal district court jurisdiction here, unlike in *Leedom,* does not mean "a sacrifice or obliteration" of Appellants' rights because there were other means within Appellants' control "to protect and enforce" those rights. *Leedom,* 358 U.S. at 190. Appellants just chose not to use those means.

Moreover, the Complaint falls short of showing a plain violation of a clear constitutional right. Under the first prong of *Leedom,* Appellants must show "a plain violation of right, even when the right is based on the Constitution rather than the statute[,]" *Squillacote,* 561 F.2d at 39, and Appellants' asserted constitutional claim "must be strong and clear." *McCulloch,* 403 F.2d at 917. "A mere allegation in the complaint that the Board has violated the [Constitution] does not confer jurisdiction. The violation must be proved." *Lawrence Typographical Union v. McCulloch,* 349 F.2d 704, 707 n.3 (D.C. Cir. 1965). In order to state a valid procedural due process claim, Appellants must demonstrate that the Board deprived them of a legally cognizable "liberty" and/or "property" right and that the deprivation was done "without due process of law." *See Tri-County Paving,* 281 F.3d at 436.

As a preliminary matter, the cases relied on by Appellants do not support Appellants' assertion that the Constitution protects employees from being compelled into an agency relationship with a labor organization against their will. (Br. 22.) Rather, they held only that compulsory union membership or financial support implicates the constitutional rights of dissenting employees. For example, in *Abood v. Detroit Board of Education,* 431 U.S. 209, 222, (1977), the associational right

identified by the Supreme Court was not a right of dissenting employees to be free from union representation so that they might contract individually with their employer, but rather the right to be free from certain compulsory payments to the union. Likewise, in *NLRB v. Granite State Joint Board,* 409 U.S. 213, 216 (1972), the Supreme Court held that dissenting employees have an associational right to resign from union membership so as to be free from punishment for violating internal union rules, not a right to opt out of union representation altogether. Similarly, in *Communications Workers of America v. NLRB,* 215 F.2d 835, 838 (2d Cir. 1954), the Second Circuit held only that dissenting employees have an associational right to resign from union membership.[18]

Indeed, we note that in *Virgin Atlantic Airways, Ltd. v. NMB.* 956 F.2d 1245, 1251-52 (2d Cir. 1992), the Second Circuit *rejected* the argument of employees opposed to union representation that their constitutional right to free association was infringed upon when the National Mediation Board compelled them into an agency relationship with a union which they asserted was chosen by *less* than a majority of employees. The Second Circuit reasoned that "[t]he First Amendment right of free association has never been held to mandate 'majority rule' in the labor relations sphere" and that if the right to free association "did protect individuals from being represented by a group that they do not wish to have represent them, it is difficult to understand why that right would cease to exist when a majority of the workers elected the union." Id.[19]

Nor have Appellants clearly shown, as they must in order to state a plain violation of a constitutional right, that the Board failed to provide them with "due process of law." Congress not only deliberately crafted the NLRA to preclude direct judicial review of representation proceedings, but it also "entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees." *NLRB v. A.J. Tower Co.,* 329 U.S. 324, 330 (1946). In *A.J.Tower,* the Supreme Court held that it was within the Board's discretion to bar post-election challenges to a voter's eligibility "even where it subsequently is ascertainable that some of the votes cast were in fact ineligible and that the result of the election might have been different had the truth previously been known." *Id.* at 333. Given that the Board's unfair labor practice process is available to employees to protect their choice from interference, the Board's post-election objection policy that Appellants attack here, like the Board's post-election challenge policy at issue in *A.J. Tower,* is "a justifiable and reasonable adjustment of the democratic process," even though it "does not pretend to be an absolute guarantee that only those votes will be counted which are in fact [free from coercion]." *Id.*

Indeed, there are other court-approved Board proceedings that can result in Board orders authorizing a union to be the exclusive bargaining representative in circumstances where the affected employees have no guaranteed opportunity to express their individual choice about, or objection to, union representation. *See NLRB v. Bums Int'l Sec. Servs., Inc.* 406 U.S. 272, 278-79 (1972) (holding that the representative of the predecessor's employees can become the exclusive representative of the successor's employees, including those who were not employed by the predecessor and had no opportunity to vote for or against union representation); *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 610 (1969) (holding that in certain circumstances the Board may order, as a remedy to violations of the Act, an employer to recognize and bargain with a union as the exclusive representative of the employer's employees even though no Board election is held to permit each affected employee to express their individual choice about union representation).

Against this backdrop, it is apparent that Appellants have failed to clearly show that they are entitled to procedural protections in addition to that which Congress considered adequate to protect employees' Section 7 rights to refrain from collective bargaining.

CONCLUSION

For the reasons stated above, the Board respectfully requests that this Court affirm the Order and Judgment of the district court dismissing Appellants' Complaint for lack of standing and subject matter jurisdiction pursuant to Rule 12(b)( ) of the Federal Rules of Civil Procedure.

Footnotes

[1] Cites to "JA" refer to the parties' Joint Appendix filed by Appellants.

[2] TBB is a wholly owned subsidiary of Freightliner LLC. (Compl. ¶ 30, JA 16.)

[3] Pursuant to the Board's Casehandling Manual, "[m]otions to intervene made by employees or employee committees not purporting to be labor organizations should be denied." NLRB Casehandling Manual Part Two Representation Proceedings § 11194.4, available at *http:// www.nlrb.gov/Publications/Manuals/*.

[4] A majority of the Board granted Appellants' request to appeal and denied the appeal on its merits because Appellants had not shown collusion by the parties to deprive them of their rights protected by Section 7 of the Act, 29 U.S.C. § 157, or other special circumstances to warrant their intervention in the representation proceeding.

[5] *See also Farhat v. Jopke,* 370 F.3d 580, 596 (6th Cir. 2004); *Alvin v. Suzuki,* 227 F.3d 107, 116 (3d Cir. 2000); *Cotton v. Jackson,* 216 F.3d 1328, 1330-31 (11th Cir. 2000); *Ali v. Reno,* 22 F.3d 442, 449 (2d Cir. 1994): *Rathjen v. Litchfield,* 878 F.2d 836, 839-40 (5th Cir. 1989); *United States v. Charles George Trucking Co.,* 823 F.2d 685, 690-91 (1st Cir. 1987); *Riggins v. Bd. of Regents,* 790 F.2d 707, 711-12 (8th Cir. 1986); *Correa v. Nampa Sch. Dist.* No. 131, 645 F.2d 814, 816-17 (9th Cir. 1981).

[6] Many of the cases cited herein employed a waiver analysis to preclude a plaintiff who fails to use the procedures available to him from later bringing a procedural due process challenge. But the precise legal theory is immaterial because whether the issue is analyzed under the doctrine of standing or the doctrine of waiver, "the basic reasoning is the same: Plaintiff has not taken advantage of the procedural processes offered to him, therefore he has not been harmed one way or another by such processes and, accordingly, cannot challenge them on due process grounds." *Shavitz,* 270 F. Supp. 2d at 711 n.8.

[7] While Appellants complain that they were compelled into an agency relationship with the UAW against their will (Br. 11), that is true of all certifications where the union does not enjoy unanimous employee support, *see, e.g., Brooks v. NLRB,* 348 U.S. 96, 103 (1954), and, in any event, it is not the reason why Appellants allege that this certification was "erroneous."

[8] Pursuant to the Board's Rules and Regulations, "[t]he investigation of an alleged violation of the National Labor Relations Act is initiated by the filing of a charge ..." 29 C.F.R. § 101.2. "A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person." 29 C.F.R. § 102.9. "The term 'person' includes one or more individuals ..." 29 U.S.C. § 152(1); 29 C.F.R. § 102.1.

[9] As later explained herein, pp. 26-30, the Board disputes that Appellants were "injured" because Appellants have not demonstrated that they "suffer[ed] an invasion of a legally protected interest ...." *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.,* 204 F.3d 149, 154 (4th Cir. 2000) (en banc).

[10] For the same reasons, Appellants cannot now argue that they did not receive "due process of law." (Br. 24-31.) "In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are *available* to him or her...." *Alvin,* 227 F.3d at 116 (emphasis added). Accordingly, Appellants cannot create a due process claim by ignoring available procedures and then arguing that the Constitution requires greater procedural protection than what was available to them. *See Santana,* 359 F.3d at 1244.

[11] Appellants' concerns about the absence of judicial review should the General Counsel refuse to issue complaint would also apply if their election objections had been considered and found to be without merit. Yet Appellants assert that that procedure would be adequate.

[12] To the extent that the evidence supported Appellants' claim that TBB unlawfully assisted the UAW, the filing of an unfair labor practice charge alleging that TBB violated Section 8(a)(2) could have resulted in the Board setting aside the certification. *See Lunardi-Cent. Distrib. Co., Inc.,* 161 N.L.R.B. 1443, 1444-45 (1966).

[13] *Pittsburgh Plate Glass Co. v. NLRB,* 313 U.S. 146 (1941), and each of the other cases cited by Appellants (Br. 34-36) are distinguishable because they all involved attempts by either the employer or the union to relitigate an issue that it had argued or that it could have argued in the prior representation proceeding to which it was a party.

[14] The Supreme Court has recognized exceptions to this rule in only two narrow and extraordinary cases, neither of which is applicable here. "Both of these cases involved exceptional factual situations of such urgency as to warrant the overriding of the congressional policy against such immediate review" in federal district court. *Greensboro Hosiery Mills,* 377 F.2d at 31. One exception is limited to cases raising questions of national interest with international implications and is not even arguably applicable to these facts. *See McCulloch v. Sociedad Nacional,* 372 U.S. 10 (1963). The other exception is limited to cases where the Board clearly violates a mandatory provision of the Act and there are no other means of remedying the violation. *See Leedom v. Kyne,* 358 U.S. 184 (1958).

[15] Indeed, the Supreme Court has repeatedly rejected such veiled attempts to obtain direct judicial review of agency action where Congress has precluded it. For example, in *Heckler v. Ringer,* 466 U.S. 602 (1984), the Supreme Court rejected Medicare claimants' argument that the district court had jurisdiction under Section 1331 to hear their procedural claims against the Department of Health and Human Services because "at bottom" the claims sought review under the Medicare Act and the claimants could not circumvent the judicial review procedures of the Medicare Act simply by packaging their claims as a challenge to the agency's procedures. *Id.* at 614-15. Similarly, as the Supreme Court itself explained in *Heckler* "the Court rejected the argument that the claimant in *[Weinberger v. Salfi,* 422 U.S. 749 (1975)] could bring his constitutional challenge to a Social Security Act provision in federal court pursuant to § 1331 because the claim was 'arising under' the Constitution, not the Social Security Act." *Id.* at 622.

[16] *See NLRB v. Interstate Dress Carriers, Inc.,* 610 F.2d 99, 107 (3d Cir. 1979); *Blue Cross & Blue Shield v. NLRB* 609 F.2d 240, 244-45 (6th Cir. 1979); *Herald Co. v. Vincent,* 392 F.2d 354, 359 (2d Cir. 1968); *Utica Mut. Ins. Co. v. Vincent,* 375 F.2d 129, 134 (2d Cir. 1967); *Boire v. Miami Herald Publ'g Co.,* 343 F.2d 17, 21 (5th Cir. 1965).
Two Circuits have expressed disagreement with *Florida Board of Business Regulation v. NLRB,* 686 F.2d 1362 (11th Cir. 1982), relied on by Appellants. (Br. 46.) *See NLRB v. Cal. Horse Racing Bd.,* 940 F.2d 536, 539 n.2 (9th Cir. 1991); *N.Y. Racing Ass'n, Inc. v. NLRB,* 708 F.2d 46, 57 n.6 (2d Cir. 1983). It is also distinguishable because there the State of Florida was contesting the Board's statutory authority to regulate the jai alai industry; it was not seeking district court review of a Board decision made in a normal union certification proceeding plainly within the Agency's statutory jurisdiction.

[17] As the Supreme Court has clarified, "central to our decision in *[Leedom]* was the fact that the Board's interpretation of the Act would *wholly* deprive the union of a meaningful and adequate means of vindicating its statutory rights." *Bd. of Governors of the Fed. Reserve Sys. v. MCorp Fin. Inc.,* 502 U.S. 32, 43 (1991) (emphasis added).

[18] It should be noted that the applicable state law already protects Appellants from being forced to become members of the UAW or from paying union dues or other fees to the UAW against their will. *See* N.C. Gen. Stat. §§ 95-80, 95-82; 29 U.S.C. § 164(b). Thus, even after certification of the UAW, Appellants "are not members of the UAW and do not support UAW representation." (Compl. ¶ 29, JA 16.)

[19] *Cf. Prof'l Cabin Crew Ass'n v. NMB,* 872 F.2d 456, 463 n.4 (D.C. Cir. 1989) ("We have carefully considered appellant's contention that the inclusion of the former strikers [as eligible voters] violated the current workers' First Amendment and due process rights. We find the argument *totally* without merit, and need spend *no* time refuting it") (emphasis added).

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Exhibit E

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON *et alia*
(Employee-Intervenors).

Case No. 10-RM-121704

REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Pursuant to § 102.65 of the NLRB's Rules and Regulations and the Administrative Procedures Act, 5 U.S.C. § 554 *et alia*, Michael Burton, Michael Jarvis, David Reed, Thomas Haney and Daniele Lenarduzzi ("Employee-Intervenors") hereby file this reply memorandum in support of their Motion to Intervene and in response to the opposition filed by the UAW on March 6, 2014.[1]

First, the UAW argues that the Employee-Intervenors have no standing to intervene because employees are not parties to an RM proceeding. Of course the

---

[1] Employee-Intervenors note that Volkswagen, the UAW's "neutral" partner, does not see "any basis for the Motions to Intervene to be granted," further lending support for the notion that it will not oppose the UAW's objections and will offer *no defense* of the February 12-14 election result.

Employee-Intervenors are not already parties to these proceedings. That is precisely *why* they seek to intervene. If they are allowed to intervene, they will become parties with standing to participate in these proceedings. *See* NLRB Rules & Regs. § 102.65(b) (an "intervenor shall thereupon become a party to the proceeding").

Indeed, the UAW's argument was rejected by the Board over 60 years ago in *Belmont Radio Corp.*, 83 N.L.R.B. 45, 46 n.3 (1949). That case involved employees also attempting to intervene in an election proceeding. The Board dismissed the argument that "Intervenors had no standing to file exceptions in this case because they are not parties to the proceeding" because "[t]he Intervenors acquired the status of parties when the Board in its discretion permitted them to intervene." *Id.* The same will be true if the Employee-Intervenors are allowed to intervene in this case to protect their rights and interests.

Second, the UAW misrepresents the Employee-Intervenors' position by arguing that they seek to intervene to argue that Volkswagen unlawfully assisted the UAW, which is more properly the subject of an unlawful labor practice charge. This not only is untrue, but is the opposite of the truth. The Employee-Intervenors do not want to intervene to prove that unlawful conduct occurred in the election, but rather that unlawful conduct did *not* occur and that the election is *not* tainted. As they stated in their motion to intervene:

> The Employee-Intervenors will: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by government officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

Employee-Intervenors' Mot. to Intervene, 10.

Moreover, the Employee-Intervenors obviously cannot *defend* the results of the election with unfair labor practice ("ULP") charges, which is all they seek here. This situation is the opposite of that presented in *Ashley v. NLRB*, 255 Fed. Appx. 707 (4th Cir. 2007), where employees attempted to intervene to argue that election results should be overturned due to wrongful employer and union conduct. In *Ashley*, it was at least conceivable that a successful ULP charge could eventually work to overturn the election that those employees lost.[2] Here, by contrast, a successful ULP charge alleging that Volkswagen wrongfully assisted the UAW would do nothing to defend (or reinstate) the February 14 election result rejecting UAW representation. If anything, such a ULP charge would have only the opposite effect. The Employee-Intervenors simply cannot defend the election's results with ULP charges, but only through permission to participate in these proceedings.

Third, the UAW's brief *supports* the Employee-Intervenors' position because the UAW intends to offer testimony and documents, and to subpoena testimony and documents from other parties, to support its objections. UAW Br., 9 n.2. Again, the Employee-Intervenors seek intervention to cross-examine the UAW's witnesses and to

[2] *Ashley* was also wrongly decided on its own merits because the possibility that an unfair labor practice charge could overturn the results of a tainted certification election sometime in the distant future did not excuse the Board's failure to provide the employees with an opportunity to be heard prior to the union's certification as their representative.

offer evidence and arguments rebutting the UAW's case. *See* Mot. to Intervene, 10. Given that the UAW's partner, Volkswagen, will not perform this function, it is imperative that the Employee-Intervenors be allowed to participate. Otherwise, the Region and Board will receive only a truncated and one-sided presentation of evidence.

In short, because the UAW and Volkswagen are colluding, no current party to these proceedings will defend the outcome of the election and the rights and interests of employees opposed to UAW representation. The Employee-Intervenors must be permitted to intervene to protect their interests and to ensure that the Board has a complete record to adjudicate the UAW's objections.

Respectfully submitted,

/s/ Glenn M. Taubman

_____

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply Memorandum were served on Region 10 via NLRB e-filing, and via e-mail to:

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this 7th day of March, 2014.

/s/ Glenn M. Taubman
_____
Glenn M. Taubman

Exhibit F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and

Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Labor Organization,

and

SOUTHERN MOMENTUM, TRAVIS FINNELL, and SEAN MOSS, et al,

Employee Intervenors.

REPLY IN SUPPORT OF SOUTHERN MOMENTUM, TRAVIS FINNELL, AND SEAN MOSS'S MOTION TO INTERVENE

Pursuant to National Labor Relations Board Rules and Regulations §102.65(b), Southern Momentum, Travis Finnell, and Sean Moss ("Intervenors"), which Intervenors do represent employees of Volkswagen Group of America, Inc. ("Volkswagen," "VW," or the "Employer"), hereby file this Reply in Support of their Motion to Intervene in this case, and in response to the UAW's Opposition to the Motions to Intervene filed on March 6, 2014 (the "UAW Opposition"). In reply, Intervenors would show:

The UAW makes two basic arguments in its Opposition brief. First, the UAW argues in Sections II and IV of its Opposition that the Motions to Intervene should be denied based on National Labor Relations Board (the "Board" or "NLRB") case handling guidelines and

precedent. Specifically, the UAW first submits that Section 11194.4 of the Board's Casehandling Manual for Representation Proceedings should prevent intervention. That argument, however, ignores two realities. First, the Casehandling Manual is not intended to be and, in fact, is not followed as a binding regulation. In the "Purpose of the Manual" section, the manual itself states that:

> The Manual is not a form of binding authority, and the procedures and policies set forth in the Manual do not constitute rulings or directives of the General Counsel or the Board. The Manual is also not intended to be a compendium of either substantive or procedural law, nor can it be a substitute for a knowledge of the law.

National Labor Relations Board Casehandling Manual, "Purpose of the Manual." Second, as demonstrated in the cases cited in the briefs of the parties and Intervenors here, including the UAW Opposition, the Board in the past has allowed employees just like the ones here to intervene into representation proceedings. See, e.g., Shoreline Enters. of America, 114 NLRB 716, 717 n.1 (1955); Belmont Radio Corp., 83 NLRB 45, 46 n.3 (1949); Western Electric Co., 98 NLRB 1018, 1018 n.1 (1952). As such, Section 11194.4 of the Board's Casehandling Manual cannot be deemed to prevent intervention in a case such as this.

The UAW also argues that the cases cited by Intervenors do not support intervention; however, the UAW only points to two cases and tries to distinguish them based on the fact that the Board allowed intervention only to a limited extent in those two cases. See UAW Opposition at 9-11. Of course, this position by the UAW ignores two facts. One, the fact that the Board limited the extent of intervention in two cases does not mean that the Board denied intervention in those two cases. In fact, the Board allowed employees to intervene in the two cases cited in the UAW Opposition. Two, the UAW ignores the fact that the Board has allowed employees in other cases cited in the Intervenors' Motion to Intervene *without limitation*. Therefore, it is perfectly clear, even in the cases cited by the UAW, that the Board has allowed employees, some

under circumstances quite similar to those of the instant case, to intervene into representation proceedings, and any argument to the contrary based solely on Board precedent or its Casehandling Manual is without merit.

The UAW's second argument against intervention (in Section III of its Opposition) is that the Intervenors' stated interests in support of their Motion to Intervene are more appropriately brought as unfair labor practice charges. See UAW Opposition at 5-9. This stance fails for a number of reasons. First, the Intervenors do not wish to become parties to this matter in order to show that unlawful activities unduly affected the election. In fact, the Intervenors desire an opportunity to demonstrate the exact opposite – i.e., that the third-party conduct complained of in the UAW's Election Objections was not unlawful and did not unduly affect the election and that the election should stand. As such, unfair labor practice charges would not be the appropriate avenue for the Intervenors to protect their rights in the instant matter.

Second, and along the same lines, the case cited by the UAW in support of its contention that the Intervenors should have taken the unfair labor practice charge route, Ashley v. N.L.R.B., 255 Fed. Appx. 707 (4th Cir. 2007), is not applicable here. The Ashley decision (in addition to being incorrect on its merits) involved employees attempting to intervene in order to overturn election results based on unlawful activities by the union and the company. Here, that is not the case, and, again, even a successful unfair labor practice charge would not protect the rights that the Intervenors are trying to protect via intervention.

Finally, even if it is somehow found that unfair labor practice charges are appropriate here, the same are not mutually exclusive with intervention. In other words, even if the Intervenors have potential Section 8 claims, that does not mean that they cannot also protect their Section 1 and 7 rights by intervention. Section 1 of the Act protects "the exercise by workers of

full freedom of association, self-organization, and designation of representatives of their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. §151(d). Similarly, Section 7 of the Act gives employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing . . . ." 29 U.S.C. §157. It is precisely these rights that the employees here seek to protect by intervention, and nowhere in the Act does it provide that these rights must be protected solely by the filing of unfair labor practice charges.

Moreover, with today's filing of Employer-Petitioner Volkswagen's position statement, which states its belief that there are no grounds for intervention in this case, it is even more crucial that intervention be allowed so that the Intervenors' Section 1 and 7 rights will be protected. Without intervention, appropriate arguments against the UAW Objections and in favor of upholding the election results simply will not be presented. As such, it is likely that the Section 1 and 7 rights of the employees, who exercised those rights on February 12-14, 2014, in voting against the UAW, could be completely ignored. Allowing the employees to intervene and to continue to exercise these rights is the only way to ensure the integrity of the representation proceeding and the paramount interest of the Act itself.

Based on the above and on the arguments in Intervenors' Motion to Intervene, it is respectfully requested that Southern Momentum and employees Travis Finnell and Sean Moss be allowed to intervene in this matter.

Respectfully submitted,

By: _____
Maury Nicely

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 7th day of March, 2014, caused a copy of the foregoing to be filed with the National Labor Relations Board via electronic filing and served upon the following counsel of record by e-mail as follows:

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Exhibit G

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.

Employer/Petitioner

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

Union

and **Case 10-RM-121704**

MICHAEL BURTON, *et al*

Intervenor

and

SOUTHERN MOMENTUM, TAVIS FINNELL AND SEAN MOSS, *et al*

Intervenor

ORDER GRANTING SOUTHERN MOMENTUM'S AND MICHAEL BURTON'S, MOTIONS TO INTERVENE IN THE OBJECTIONS HEARING

On February 21, 2014,[1] the Union filed objections to conduct affecting the election, which was held on February 12, 13, and 14 among the production and maintenance employees of the Employer-Petitioner. In its objections, the Union contends that prior to the election, coercive statements, which include threats of job loss and employment opportunities were made by certain non-Employer representatives, including public officials and employee groups who oppose representation by the Union, including Southern Momentum and Michael Burton. The Union contends that these statements destroyed the laboratory conditions necessary to conduct a fair election and affected the results of the election thereby warranting setting the election aside.

[1] All dates are in 2014 unless otherwise indicated.

On February 25, Michael Burton, Michael Jarvis, David Reed, Thomas Haney and Daniele Lenarduzzi (Employee-Intervenors) filed a Motion to Intervene in this proceeding. On February 28, Southern Momentum, Travis Finnell and Sean Moss (Southern Momentum) filed a similar Motion to Intervene and alternatively, requested leave to file an amicus response to the objections. The Motions were served on the Petitioner-Employer and the Union, requesting that each party submit a response to the Motions by March 6. Specifically, Employee-Intervenors and Southern Momentum contend that their participation in the post-election objections proceeding is necessary in order to ensure that a complete record is developed at the hearing concerning the issues raised by the Union's objections. Both the Petitioner-Employer and the Union oppose the Motions to intervene.

Having duly considered the matter, including the positions of all parties, I have determined that the unique circumstances of this case involving third party misconduct weigh in favor of permitting the Employee-Intervenors and Southern Momentum to participate in the hearing on the Union's objections. This is a non-precedential exceptional circumstance where consideration for deviating from our normal practice is warranted. I recognize that there have been few instances in which employees who are not a party to the election have been granted intervenor status at the post-election proceedings. However, in this unique case involving third party misconduct, some of the alleged objectionable conduct involves statements made by employees who oppose representation by the Union and the extent to which those statements could cause the election to be set aside. Thus, in situations such as this, where the rights of certain individual employees were implicated, the Board has permitted those employees the right to participate in the hearing.[2]

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[2]See, e.g., *Shoreline Enterprises of America*, 114 NLRB 716 (1955).

Accordingly,

IT IS HEREBY ORDERED that the Motions to Intervene filed by the Employee-Intervenors and Southern Momentum are granted for the purpose of participation at a hearing on the Union's objections by: (1) offering evidence in rebuttal to the Union's objections, (2) cross-examining witnesses, and (3) filing briefs with the Board.

Dated: March 10, 2014

Mary L. Bulls

MARY L. BULLS
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Exhibit H

Second group files to keep UAW from reversing VW plant vote

Fri, Feb 28 2014

By Bernie Woodall

Feb 28 (Reuters) - An anti-union group representing workers at Volkswagen AG's Chattanooga, Tennessee plant on Friday moved to undercut a United Auto Workers challenge of an election in which the union failed to organize the factory, the second such action this week.

Southern Momentum, an anti-UAW group overseen by a Chattanooga attorney, filed to intervene in the UAW's objection to the election results to the National Labor Relations Board.

In their petition to the NLRB, the workers asked to intervene in the UAW's appeal, saying the union and VW are in collusion to bring unionization to the Chattanooga plant.

The NLRB will consider the UAW's appeal of the Feb. 12-14 election, which the union lost by a 712-626 vote. The union claimed in its objection to the vote that outside interference and what it characterized as intimidation led by politicians such as Republican U.S. Senator Bob Corker of Tennessee improperly influenced worker-voters.

A news release from Southern Momentum said that if Volkswagen officials do not respond to the UAW's objection, which the group said appears to be the case, then "appropriate arguments against the objections and in favor of upholding the election results may not be presented."

Similar wording was included in a petition filed on Tuesday by the National Right to Work Foundation and five anti-UAW workers at the plant, also seeking to be heard by the NLRB when it considers the UAW's objections to the election.

The UAW has until March 7 to present evidence to the NLRB's regional headquarters in Atlanta backing up its case.

Southern Momentum was established as a non-profit group last month in order to represent workers opposing UAW representation at the Chattanooga VW plant.

Maury Nicely, a pro-management labor attorney based in Chattanooga, represents the group.

Nicely said in an interview earlier this month that he led fundraising for Southern Momentum, which in late January and early February raised money "in the low six figures" from Chattanooga area businesses and individuals.

Nicely said the money was not raised by anti-UAW workers at the plant. He said the funds paid for anti-UAW T-shirts and fliers handed out by workers at the plant, as well as local newspaper advertisements.

Nicely said the Southern Momentum group is "on a parallel track" with the National Right to Work Foundation but said the two groups are not working together. (Reporting by Bernie Woodall; Editing by Jonathan Oatis)

Exhibit I

From: Michael Nicholson <mnicholson@uaw.net>
Subject: Fwd: Projections VW UAW Case study 3/5/14
Date: 12 March 2014 11:32:53 EDT
Bcc: Michael Nicholson <mnicholson@uaw.net>

From: mailer@infusionmail.com [mailto:mailer@infusionmail.com] **On Behalf Of** Walter Orechwa
Sent: Wednesday, March 05, 2014 7:31 AM
To:
Subject: The Fascinating TRUE story behind the UAW's Campaign to Organize VW

Having trouble viewing this email? Click here

March 5, 2014

Dear _____,

Whenever something this big happens, there are plenty of opinions to go around. In the case of the UAW's 2-year organizing campaign at Volkwagen's plant in Chattanooga, TN, that's been taken to an extreme.

As one of the resources VW's employee group, Southern Momentum, called on, Projections'**Union Proof team** got an inside look at what truly transpired. It's a fascinating story, and really, one every labor relations professional should know. From politicians to the neutrality agreement, and the fact that it was just 9 days from petition to election, the details of this story will be discussed and referenced for years to come.

> Download The Case Study Now

I hope you enjoy the Case Study, and as always, if you or _____ need employee communication assistance at any time, please don't hesitate to to contact us.

Walter Orechwa
Chief Executive Officer
Projections, Inc.
Award-Winning
Employee Communication Experts
877-448-9741 Ext. 213

Create **A Better Leader**
Effective Online Leadership Training

Get **Union Proof**
Powerful Labor Relations Resources

Case Study: VOLKSWAGEN AND THE UAW

Compiled By the Team at UnionProof.com

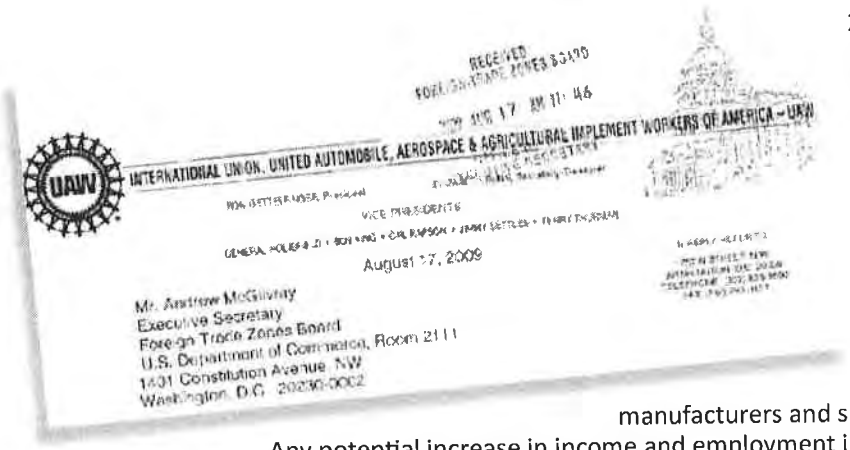
On Valentine's Day, 2014, the UAW lost an historic representation election at Volkswagen's Chattanooga, Tennessee plant. Despite what was possibly the most hospitable employer in UAW organizing history, 89% of the 1,600 VW workers voted: 712 to 626 against unionization. (http://wapo.st/MVG2Uz)

UAW organizers thought the vote was a foregone conclusion. After all, Volkswagen gave the UAW access to employees, and signed an agreement stating they they would not fight unionization. The UAW spent more than 2 years and an estimated $5 million, and yet employees pushed back against the UAW themselves, ultimately rejecting unionization altogether. (http://bit.ly/M6hdVg)

To fully understand this pivotal (at least for the UAW) campaign, it's important to get some background on both Volkswagen and the UAW.

How We Got Here: Volkswagen Group of America in Chattanooga

With the exception of a decade of manufacturing by Rolls-Royce in the 1920's, Volkswagen was the first foreign manufacturer to build their product in the United States. But sales of Volkswagen's US-built cars plummeted between 1980 and 1985, and in 1988, Volkswagen's last US assembly facility in Westmoreland PA shut it's doors. But other foreign manufacturers had been paying attention, and began following the Volkswagen model. Companies like Honda (first US plant in 1982) and Toyota (first US plant in 1988) began production in union-free facilities across the country. (The only foreign automaker in the U.S. that is unionized is a Mitsubishi Motors assembly plant in Illinois.)


INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

August 17, 2009

Mr. Andrew McGilvray
Executive Secretary
Foreign Trade Zones Board
U.S. Department of Commerce, Room 2111
1401 Constitution Avenue, NW
Washington, D.C. 20230-0002

20 Years later, sales resurged, and in 2009, Volkswagen decided to resume US-based production in Chattanooga TN. When the Chattanooga plant began production in early 2011, it marked the first time Volkswagens had been built on American soil since 1988.

The UAW tried to stop Volkswagen, claiming that the Chattanooga project's application for a temporary Foreign-Trade Zone manufacturing authority would place domestic auto manufacturers and suppliers at a competitive disadvantage. Any potential increase in income and employment in Chattanooga resulting from such authority would come at the greater expense of lost income and employment elsewhere in the domestic economy. (Remember UAW is a major stockholder in two of VW's biggest competitors, GM and Chrysler). (http://bit.ly/1m1zhgH)

But Volkswagen moved forward and production began in April of 2011.

Volkswagen invested $1 billion into building the plant, awarding $379 million in local construction contracts and another $307 million in annual supplier contracts. This created 9,500 jobs at those supplier companies and by May of 2012, the 3,200 employees at the Volkswagen plant celebrated the manufacture of their 100,000th Passat. The facility has brought $12 Billion in income growth to Tennessee and has added $1.4 billion in total state tax revenues. (http://bit.ly/1ftqKxz) By May of 2014, Volkswagen employees in Chattanooga will manufacture their 300,000th car.

How We Got Here: The United Auto Workers

Back in 1979, the UAW boasted 1.5 million members. Today, they can barely claim 400,000 among their ranks(a 75% decline). The UAW's Volkswagen effort was not just another organizing campaign but what the union hoped would be the start of a trend that would save their struggling union. (http://politi.co/NNGdT4)

As employees at VW Chattanooga turned out the 100,000th Passat in May of 2012,. the UAW knew it was time to come calling. VW seemed liked the perfect target: German-owned, with every plant in Europe belonging to the powerful steelworker's union IG Metall and operating with a Works Council.

"If we don't organize these transnationals. I don't think there's a long-term future for the UAW – I really don't."

-Bob King, UAW President, 2011 (http://bit.ly/1cRonUo)

An Aside: Context and US Labor Law

For those unfamiliar with the concept, a "works council" is established by plant employees, but paid for by the employer to negotiate factory-specific conditions, such as bonuses, daily work hours and codes of conduct. Bargaining for wages and benefits is done by an industry-level union. (http://bit.ly/1hq1NtO)

The German model of dual representation -- with an industrywide union and plant-level works councils negotiating workplace terms of employment -- is inconsistent with U.S. law. The National Labor Relations Act requires that the employer negotiate terms and conditions of employment with the workers' union as their exclusive bargaining representative. This basically stops the establishment of works councils altogether. (In a 1994 case (NOS. 92-4129, 93-1169) involving Electromation Inc., the NLRB, building on a 1959 Supreme Court ruling (NLRB vs. Cabot Carbon Co. – 360 U.S. 203), found that the law prohibits the creation of any employer-assisted organ that engages in bilateral communications with employees on wages, hours or working conditions. (http://bloom.bg/1cmAUhK)

In the case of VW, the union (IG Metall) has unique management powers over the German company, and union officials who can make good on either their threat or promise have arguably the same powers as management. It should be noted that IG Metall holds several seats on Volkwagen's supervisory board, the equivalent of a board of directors and they have made establishing a Chattanooga works council a high priority. (http://bit.ly/1f6yw5z)

Ironically, the AFL-CIO has opposed legislation, such as the Team Act of 1995, which would have expanded the permitted scope of employee-involvement committees and increased employer-employee collaboration. (http://bit.ly/1nHvDHD)

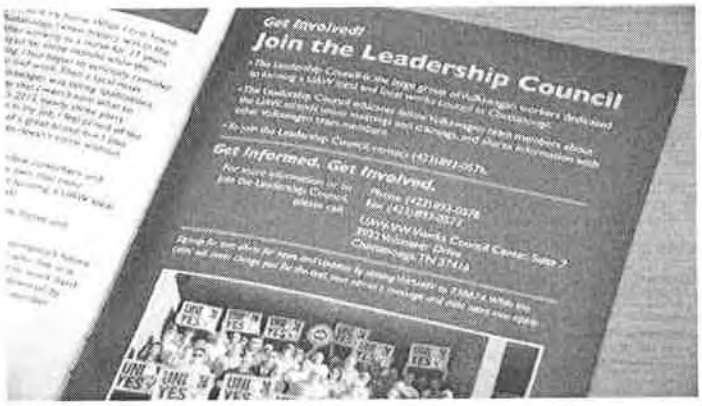
And Now, Back to the Campaign...

The UAW's strategy to organize a foreign automaker in the U.S. was already underway with Daimer AG (Mercedes-Benz) factory in Alabama and a global Nissan campaign. Once the UAW conquered VW, they were hopeful that, like dominioes, KIA, Toyota, Honda, Nissan, Hyundai and BMW would fall to the United Autoworkers as well.

After months of typical UAW ground work and investigation into Volkwagen (but with very little progress in gaining employee support), the UAW decided on a different approach: to start a U.S. works council, with the UAW as the union of choice... even though such an arrangment is prohibited by U.S. law.

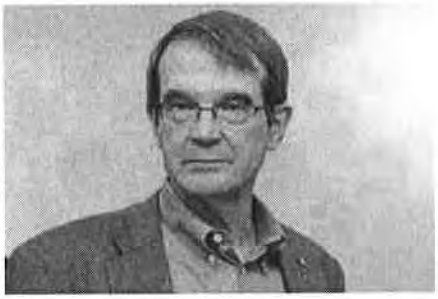
In March of 2013, Berthold Huber, President of the German Volkswagen union, IG Metall issued a letter in support of the UAW's representation of the Chattanooga workers. (http://bit.ly/1bFMAT7) His letter caught the attention of the leaders of the National Right to Work Legal Defense Foundation, who said they were concerned that United Auto Workers officials were pressuring Volkswagen to "cut backroom deals" that would force unwilling employees into the union ranks. (http://bit.ly/1chVlR7)

In May, IG Metall circulated a brochure to VW employees, asking them to get involved, "sign up", and Join the Leadership Council.



In June, Stephan Wolf, a high-ranking labor leader who sits on VW's supervisory board told a German news agency, "We will only agree to an expansion of the site or any other model contract when it is clear how to proceed with the employees' representatives in the United States." This meant that Volkswagen's board wouldn't authorize the addition of a second assembly line at the Chattanooga plant - or ANY new product - until the plant joined the works council that represents all of VW's other assembly facilities. (http://bit.ly/1ftBifV)

By September of 2013, Gary Casteel, regional director for the UAW, said that a majority of VW's 1,600 eligible workers had signed cards that included a statement about wanting to join Volkswagen's Global Works Council, in support of a cooperative and collaborative relationship with the company. Casteel also stated that the cards were as legally binding as an election by the employees. (http://bit.ly/1nHnfba)



"We had some issues with the local management but those have been resolved. The notion that Southern workers do not want a union is false."

UAW President Bob King (http://bit.ly/1olryGr)

President of Volkswagen America Jonathan Browning addressed the possibility of unionization at the local plant, saying that company leaders were looking for an "innovative solution" to the situation, in which "employees can have a strong voice locally and globally."

"We've been very clear that the process has to run its course," he said, when asked about negotiations between VW and United Auto Workers leaders. "No decision has been made. It may or may not conclude with third-party representation." (http://bit.ly/1ftBYIs)

Note: VW fired Browning in December, stating that he was leaving the company "for personal reasons and returning to the U.K." with no mention about his public opposition to the UAW. (http://usat.ly/1bZKEDP)

Toward the end of September, eight Volkswagen employees in Chattanooga filed federal charges with the NLRB, alleging that UAW representatives misled and coerced them to "forfeit their rights in what is now a 'card check' unionization drive." The charges stated that UAW organizers told VW workers that a signature on the card was to call for a secret ballot election. The employees also alleged other improprieties in the card check process, such as using cards that were signed too long ago to be legally valid. (http://bit.ly/1moTOPM)

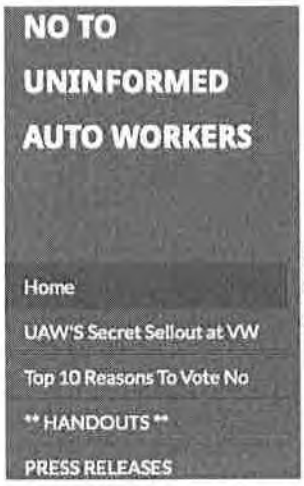
Mark Mix, president of the National Right To Work Foundation, said the UAW was hoping to avoid an election, which he said would have taken a basic right away from the workers. The Foundation agreed at this point to assist with legal representation for the employees. (http://reut.rs/1cRuXdw)

"It just shows you what three years of soft pressure can do," said Chattanooga attorney Maury Nicely, who specializes in labor and employment. "They never staged big press conferences. They quietly worked with a company that's willing to be neutral. If you think that just staying quiet and neutral will make the union get tired and go away—it won't." (http://bit.ly/1fb0DPv)

Employees Start their Own Campaign To Push Back

As it became evident that the UAW wasn't leaving and that VW wasn't going to oppose the organizing effort, Volkswagen employees set up a website: No2UAW.com, as well as a FaceBook page, in an effort to now reach out to all concerned VW team members. (http://on.fb.me/1jxeCzl)

Within just a few days, and without assistance from VW, these employees obtained more than 600 signatures from their co-workers on a petition stating their opposition to unionization.



Election results are in.
Thank you to everyone for your hard work and realization
that we don't need the UAW to have a voice.
712-626 against the UAW.

Employees Call for the Right To Vote

In October, Bernd Osterloh, head of VW's global works council, said in a statement that forming a council was important if the Chattanooga plant wanted to produce other VW cars, and that he would keep talking with the UAW. This statement alone could either be construed as a threat if employees wished to remain union-free, as well as a promise should employees choose to unionize.

In either case, if this type of statement was uttered by a member of management (U.S.) during a union organizing campaign, the statement would likely be construed by the NLRB as coercively interfering with employees' rights and, as a result, an unfair labor practice.

When Osterloh's comments reached the plant, four more workers filed another charge with the NLRB, alleging statements by German VW officials were illegally coercing employees into UAW representation. (http://bit.ly/1jxhkVx)

Both sides are seeking to be conciliatory. UAW President Bob King said he realizes that any deal has to work "for our employers." Volkswagen, meanwhile, is aiding the UAW's effort to represent the workers in wage and benefits bargaining in return for a promise the union will cede its authority to a German-style "works council."

Note: In Germany, union affiliation isn't required for employees to form worker councils, says Gary Chaison, a labor law professor at Clark University in Worcester, MA. The tactic of organizing employees into worker councils could help the UAW increase membership. (http://bit.ly/1f6yw5z)

At this point, the Chattanooga employees began pushing for a secret ballot election. The UAW opposed this course of action, saying that a card check would eliminate the need for a more formal and divisive vote and allow the union and VW to represent the workers using an "innovative model" that would be a milestone in

the union's long-running effort to organize foreign-owned auto plants." (http://reut.rs/1dE9aKK)

UAW President Bob King, referring to outside nonunion groups that would likely pit workers against each other, said, "An election process is more divisive. I don't think that's in Volkswagen's best interests. I don't think that's in the best interests of Tennessee. If they want to ... recognize us based on majority, I think that is the quickest, most effective way," he added, noting that the UAW has taken a similar approach with hundreds of other companies in the United States." (http://bit.ly/1gwozgF)

n January, Officials with the National Labor Relations Board recommended that allegations be dismissed against Volkswagen Group of America and the United Auto Workers Union. (http://bit.ly/1gNSQXB)

Meanwhile, Back in Detroit...

On January 15, 2014, UAW President Bob King confirmed the union's international committee was proposing a staggering 25 percent dues increase for all members — an extra "half hour" from the current "two hours of pay" members currently paid per month. It was stated that this was the first dues hike since the late 1960s, and that the money would be directed into the union strike fund.

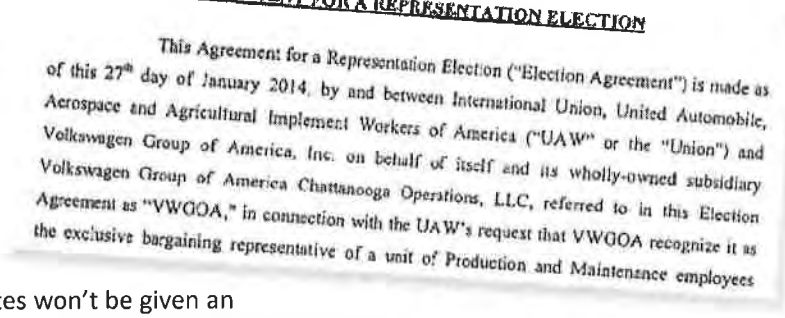
King felt that the strike fund was a necessary show of strength. At one point, the fund was $1 billion, but today it stands at just over $600 million. King wanted to see the fund returned to $1 billion, to send a message to companies to bargain in good faith. "The strike fund really serves as a deterrent," King told the Automotive News World Congress in Detroit, held in conjunction with the Detroit auto show. "I think our members will overwhelming support this."

Furthermore, he said, organizing workers at foreign auto plants in the United States isn't cheap. "Those campaigns take a lot of money," he said. (http://bit.ly/1fgW8TC)

There Is No Bad Press

The effort to block the unionizing of Volkswagen's Chattanooga plant became the top goal for the newly formed Center for Worker Freedom, according to the group's executive director. Similarly, Matt Paterson, whose organization is a part of the Washington, D.C.-based Americans for Tax Reform, said "That fight is our top priority." (http://buswk.co/1bYQr8d)

January also brought insightful predictions by Dr. John Raudabaugh, former NLRB member and teacher of labor law at Ave Maria School of Law in Naples, FL. "The company itself could file for an employer petition to determine support for a union. Raudabaugh said that in nearly all cases, the union files the petition." Raudabaugh said he's worried that VW and the UAW are "in bed with each other" and that anti-union advocates won't be given an equal chance to state their case to workers. (http://bit.ly/1ft7wve)



AGREEMENT FOR A REPRESENTATION ELECTION

This Agreement for a Representation Election ("Election Agreement") is made as of this 27th day of January 2014, by and between International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW" or the "Union") and Volkswagen Group of America, Inc. on behalf of itself and its wholly-owned subsidiary Volkswagen Group of America Chattanooga Operations, LLC, referred to in this Election Agreement as "VWGOA," in connection with the UAW's request that VWGOA recognize it as the exclusive bargaining representative of a unit of Production and Maintenance employees

Monday, January 27th: An agreement for a Representation Election with Neutrality language was drafted by VW and the UAW. (http://bit.ly/1biK6cP)

"The more interesting question is why a union would not file its own petition, he said. Raudabaugh said he thinks the likely answer would be that VW and the UAW had "a tactical reason. Companies file so that if the union loses, it doesn't look like they triggered the election," he said.

Picking Up The Pace

Usually, the union will file an RC peition with the NLRB, requesting an election. But on Monday, February 3rd, Volkswagen filed for an NLRB election with a signed RM Petition. (http://1.usa.gov/1gS4dOf)

VW and the UAW also presented a Stipulated Election Agreement, requesting an expedited election. (http://1.usa.gov/O5oPJw)

"Volkswagen Group of America and the UAW have agreed to this common path for the election," said Frank Fischer, chairman and CEO of Volkswagen Chattanooga, in the statement. "That means employees can decide on representation in a secret ballot election, independently conducted by the NLRB. Volkswagen is committed to neutrality and calls upon all third parties to honor the principle of neutrality." (http://bloom.bg/1oO3imr)

Raudabaugh said, "if there is an election, it will be interesting to see how much time passes before the election is called and the length of the voting period."

Southern Momentum

The election date was set for just 9 days out. On February 4th the employee-led opposition grew into a non-profit group calling themselves, "Southern Momentum." They stated that their objective was to "ensure that all VW employees receive accurate, complete, and balanced information about the upcoming election." They announced workers will finally get a chance to vote. (http://bit.ly/1eNOf3j)

"We encourage our fellow team members to really look at the facts about the UAW and vote no," said Mike Burton, who had helped put together the anti-unionization website, no2uaw.com. "It appears [the UAW] needs us more than we need them. We can have representation on VW's Works Council without the UAW. That's why we're encouraging our fellow team members to get all of the facts and vote no." (http://bit.ly/1h2Hgqy)

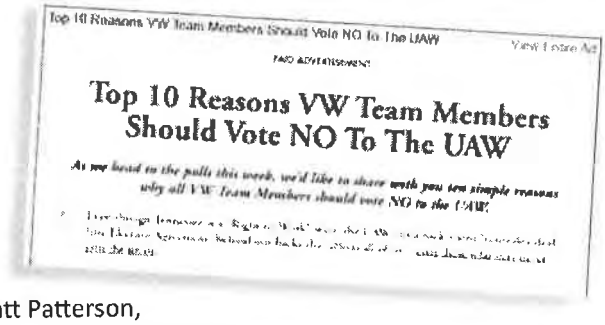
Cornell University professor Dr. Lowell Turner who directs The Workers Institue commented, "It's an unusual election, he said. "It's very rare that you get outside forces campaigning. I'm sure there will be intensive campaigning. It's one thing to have management [campaigning], but with outside forces it's a whole new ball game.

The next day, February 5th the Notice of Secret Ballot Election was posted stating that the election would be over a 3-day period, starting at 6:00am on February 12th and ending at 8:30pm on February 14th.

As part of the VW signed 22-page Neutrality agreement, 20 UAW organizers wearing black shirts with UAW insignia were granted the ability to campaign on company property, such as inside break rooms and lunch areas (they even interrupted Team Members on the production floor even though VW management assured this would not happen), and were be given an office in the plant and bulletin board space to post campaign literature.

During company meetings, UAW organizers were given the floor to speak with employees. Employees were told they were welcome to leave as the UAW spoke to persuade team members of why they should vote for the UAW. The workers who stayed to hear what the union organizers had to say were told they could not ask any questions.

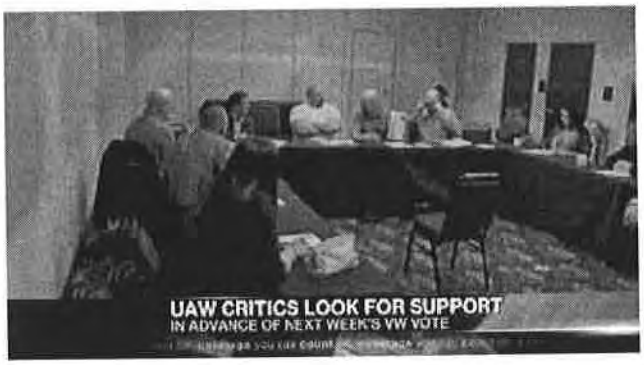
"When management (pays and) requires team members to attend a meeting, then invites team members to stay and listen to union officials who won't answer any public questions—let alone allow questions to be asked—something stinks," said Mike Burton. (http://bit.ly/1kVZpJd)


Top 10 Reasons VW Team Members Should Vote NO To The UAW

Top 10 Reasons VW Team Members Should Vote NO To The UAW

Volkswagen had previously rejected a request from VW workers to give equal time to workers opposed to unionization attempts by the UAW. The rejection drew condemnation from labor watchdogs, including Matt Patterson, executive director of the Center for Worker Freedom. (http://bit.ly/1m6KBrN)

"That's what's been a little frustrating for our group," Maury Nicely, who represents Southern Momentum. Nicely, a Chattanooga-based lawyer for Evans Harrison Hackett PLC, says opponents of the union movement inside the factory have been on their own on an uneven playing field against UAW efforts. "The UAW has been granted access to the property in the run-up to the week's vote. This really placed us at a disadvantage in getting our message across." (http://bit.ly/1gEf510)



6 Days Until the Vote

On Thursday, February 6th, Southern Momentum announced that they would be holding an informational meeting for any interested VW Team members and their families that Saturday, February 8th. The meeting was held off-site from the VW campus because VW management had denied the request for equal time on-site. (http://bit.ly/1jQHh5T)

Volkswagen Answers Back

"From a very legal standpoint, that's VW's right," said Southern Momentum's Maury Nicely, "The whole premise of our electoral system is that voters have the right to be informed. The degree to which we have seen the term 'neutrality' redefined in this election has been unprecedented."

In a statement, Volkswagen Chattanooga Vice President of Human Resources Sebastian Patta said, "Outside political groups won't divert us from the work at hand: innovating, creating jobs, growing and producing great automobiles. Fact is: Our employees are free to discuss and state their opinions at the plant and to distribute campaign materials, including flyers and other literature, irrespective of whether they are in favor of or against a union."

The vote was to be the first at a major foreign automaker's assembly plant for the UAW since its failed attempt to gain the right to represent Nissan workers in Smyrna, Tennessee in 2001. With the help of resources from Projections' Union Proof Team, Nissan won that vote by a 2-to-1 margin.

...Video, Websites, TV... Oh My!

Both union and anti-union forces spent much of that week promoting their views through radio, newspaper ads, websites and billboards.

The Center for Worker Freedom, a special project of Americans for Tax Reform, headed by conservative Grover Norquist, purchased 13 billboards in the Chattanooga area, including 11 digital boards. The boards carried a strong message. One billboard linked

the UAW to President Barack Obama, whose national approval ratings are low, and another linked the union to the demise of Detroit, which filed the biggest municipal bankruptcy in U.S. history last July.

Southern Momentum group called on Projections' Union Proof Team to help produce three videos, made available on the no2uaw.com website. The videos were factual and based on cautionary tales, including a testimonial from a former Volkswagen worker at the company's shuttered plant in Pennsylvania that once made VW's Rabbit. Another video, with an on-camera narrator, provided the truth about the UAW, laying out a litany of UAW offenses, including support for liberal political groups that fight gun control.

The UAW bought radio advertisements in the last days of the campaign, while Southern Momentum took out full-page ads in the Chattanooga Times Free Press, and ran advertisements in the Cleveland Banner, the newspaper in Bradley County, north of Chattanooga, where many VW workers live. (http://reut.rs/1d00c6l)

Tennessee's Republican Governor Bill Haslam told the Tennessean, "I think that there are some ramifications to the vote in terms of our ability to attract other suppliers. When we recruit other companies, that comes up every time." (http://tnne.ws/1jCtgoV)

Two days before the election began, Republican State Senate Speaker Pro Tempore Bo Watson and Republican House Majority Leader Gerald McCormick suggested that Volkswagen might not receive future state subsidies if the plant unionized. (http://bit.ly/1jcijuN)

The Union Proof Team

On February 3rd, the call came in to Projections' Union Proof Team from the Southern Momentum non-profit group. This group of employees and concerned citizens knew then that an election was likely, and very likely to be very quick. When Volkswagen asked for a fast vote on Februrary 3rd, the Union Proof Team immediately went to Chattanooga to begin drafting a communication strategy. Scripts were written, testimonials shot, and in-plant footage was recorded.

Walter Orechwa, CEO of Projections, said, "The VW/ UAW 9-day petition-to-election process was an excellent prototype for an ambush election. The truth is, regardless of the timeframe, powerful employee communication is always key to remaining union-free."

By February 4th, the first script drafts were ready and a day later, the first testimonial video was live. As powerful as that video was, it seemed imperative to capture the story of Volkswagen's former employees in Pennsylvania. The Union Proof crew was on-site in Westmoreland, PA on February 6th, all while producing the fact-based "25th Hour" video on the UAW back at the studios. On February 7th, all 3 videos were ready. (http://bit.ly/1kgfcVJ)

The consultants and advisers on the Southern Momentum team requested that the videos be placed on flash drives, which was done overnight so the message could be provided to employees to take home with them that same day, February 7th.

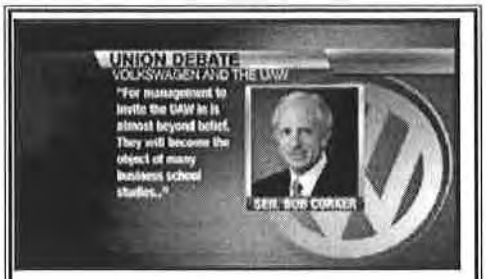
On February 8th and 9th, the videos were shown at two public meetings led by Southern Momentum, and were then placed online at no2uaw.com for employees, their families, the community, and other influencers

> We felt like we were already being treated very well by Volkswagen in terms of pay and benefits and bonuses," said Sean Moss, who voted against the UAW. "We also looked at the track record of the UAW. Why buy a ticket on the Titanic?

And So It Begins

On day one of the three-day election, U.S. Sen. Bob Corker (R-Tenn.)—the former mayor of Chattanooga—declared, "I've had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga." (http://bit.ly/MA7yae)

Day two of the election: Volkswagen Chattanooga Chairman and CEO Frank Fischer refuted Corker, saying the union election would have no effect on the SUV decision, Corker doubled down. "Believe me, the decisions regarding the Volkswagen expansion are not being made by anyone in management at the Chattanooga plant.



U.S. Senator Bob Corker called the UAW a "destructive force," and he said the union will damage the city's ability to attract suppliers and will stifle potential economic growth. (http://bit.ly/1cRxvZo)

After all these years and my involvement with Volkswagen, I would not have made the statement I made yesterday without being confident it was true and factual." (http://bit.ly/1fgTsoT)

On the final day of the 3-day vote, even President Obama voiced support for the unionization effort, telling House Democrats that Republicans looking to block the union were "more concerned about German shareholders than American workers." (http://reut.rs/M0Fnk2)

It All Comes Down To This

The UAW spent more than two years organizing, and then called a snap election in an agreement with VW. German union IG Metall worked with the UAW to pressure VW to open its doors to organizers. But local anti-union forces showed a strength that the German union, the UAW, and even Volkswagen never expected.

On Feb. 14th 8:30pm, voting was closed, and a 10:00pm press conference was given by Volkswagen. In that press conference, Volkswagen announced that the UAW had lost the bid for representation. 89% of the 1600 eligible voters cast ballots, voting 712-to-626 against unionization.

National Right to Work Foundation President Mark Mix hailed the outcome, "If UAW union officials cannot win when the odds are so stacked in their favor, perhaps they should re-evaluate the product they are selling to workers." (http://bit.ly/1jO6y0g)

February 16, two days after the election...

Volkswagen's works council said it would press on with efforts to set up labor representation at its Chattanooga, Tennessee plant, undeterred by a workers' vote against any such step involving the United Auto Workers union (UAW).

"The outcome of the vote, however, does not change our goal of setting up a works council in Chattanooga," Gunnar Kilian, secretary general of VW's works council, said in a statement on Sunday, adding that workers continued to back the idea of labor representation at the plant. (http://huff.to/1e1eByR)

February 21, eight days post-election...

On February 21st, The United Auto Workers filed an appeal with the National Labor Relations Board, asking them to set aside the results of the election. (http://bit.ly/1mMLvtR)

The UAW claimed that outside interference led by politicians such as Republican U.S. Senator Bob Corker improperly influenced worker-voters. The UAW said the U.S. National Labor Relations Board would investigate the election and decide if there were grounds to scrap it and hold a new one.

February 26, twelve days post-election...

According to the National Right to Work Foundation , five Volkswagen workers, including Mike Burton, of Southern Momentum, filed to be allowed to intervene against the UAW's objection to the election results.

The five workers said that if they are not heard, VW and the UAW will not present a defense of the vote's result. The employees went on to say that the company and the union colluded to support unionization.

"Of course, if you don't win, you review your strategy."

Opinions on what's next for the UAW as a result of the loss at Volkswagen are all over the map, from the eventual demise of the union itself to the idea that they'll return for another vote in a year. Harley Shaiken, a labor economist with the University of California at Berkeley, said, "The ferocity of the anti-union forces only reinforces the fact that there is a powerful new form of organizing emerging. Volkswagen turned out to be painful because it was so close. This doesn't prove it can't be done; it proves how close they came. It laid the basis for future organizing." (http://bit.ly/1m5LozB)

Perhaps most telling was the realization UAW President Bob King came to, "The difference in the vote ... was people hunting down the information to make an intelligent decision, not just listening to their buddies. Of course, if you don't win, you review your strategy." (http://bit.ly/1m5LozB)

"Volkswagen's a class act. They really are. They set a standard in the United States ... We're not leaving Chattanooga ... It took seven years to organize Ford. So I'll be around for the next five."

-Dennis Williams, UAW Secretary-Treasurer
Williams is expected to be elected the union's next president (http://bit.-ly/1m5LozB)

About "Union Proof - Creating Your Union-Free Strategy"

Today, organized labor is fighting for its very existence. They're using every weapon at their disposal - including every channel of communication, running corporate campaigns, and influencing politics and legislation with large donations. Their foot soldiers are waging an all-out war against corporate America, and the spoils of victory are your employees.

In "Union Proof: Creating Your Successful Union Free Strategy," we provide knowledge based on over 35 years of helping companies maintain a direct connection with employees. This book gives you the "best practices" that truly make a difference in remaining union-free. Far from a legal text, "Union Proof: Creating Your Successful Union Free Strategy" provides the practical tools and advice that can help you make union representation irrelevant within your organization.

Whether you're a Human Resources executive, thrown into the midst of a cardsigning campaign or a seasoned Labor Relations expert, Union Proof cuts right to the essentials with 11 areas to implement best practices, the 5 steps that prevent organizing drives, plus tips and sample communication plans that will help you craft your successful union free strategy.

Visit us online at www.UnionProof.com
Or, For Immediate Assistance, contact us at 877-448-9741

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2014, I submitted the foregoing UAW's Request for Special Permission to Appeal Order Granting Intervenors' Motions to Intervene to the National Labor Relations Board by electronic filing and e-mailed a copy of same to:

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